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## CONSTITUTIONAL CHAFF





# Constitutional Chaff - REJECTED

SUGGESTIONS *of the*  
CONSTITUTIONAL  
CONVENTION *of* 1787  
WITH EXPLANATORY ARGUMENT

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*Compiled by* JANE BUTZNER *from the*  
*Notes of* JAMES MADISON *of Virginia,*  
MAJOR WILLIAM PIERCE *of Georgia,*  
DR JAMES MCHENRY *of Maryland,* RUFUS  
KING *of Massachusetts,* and the HON-  
ORABLE ROBERT YATES *of New York*

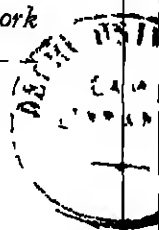
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MANUFACTURED IN THE UNITED STATES OF AMERICA

TO 1712 MONROE AVENUE



## PREFACE

AS LONG AS the Constitution lives, the talk and the plans and the argument that built it will be part of the life and the fire of new Constitutional controversies and of new versions and revivals of the old issues. Their merits, like those of the Constitution itself, will be debated. To read the rejected Constitutional suggestions and the points in their favor is not by any means to putter through an old curiosity shop.

Because of the disorganized subject matter in the chronological notes of the Constitutional Convention, editorials and articles and speeches which cite the ideas considered by the Convention are often inaccurate and incomplete. Some particularly mauled and misunderstood "quotations" prompted me to make this compilation. The device I have used is to set forth under each of the Constitution's provisions the plans that would have replaced or modified it and the arguments in their favor.

I hope this book will be liked by those who would enjoy speculating, for example, on the course of our government if the Constitution had provided that the Senate sit constantly and have full authority over foreign affairs, by those who would be interested to note, for instance, how the authors of the Constitution failed to foresee the development and influence of political parties, in other words, by those who read for the best possible reason—entertainment.

The source of the notes from which this book was compiled is *Documents Illustrative of the Formation of the Union of the American States*, House Document No. 398, 69th Congress, First Session, in which for the first time all the known notes on the proceedings of the Constitutional Convention (among other things) were collected and made available to the general public.

My compilation from the Convention notes would not have been made without the encouragement and assistance of the members of my family, and the enthusiasm and wisdom of Robert H. Hemphill.

JANE BUTZNER

New York

September, 1940



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## INTRODUCTION

IT SEEMS like a faithless thing—to emphasize the differences of opinion, the plans which met disfavor, of a group of men whose greatest wish was for their country's good, and whose conviction it was that this could best be obtained by composing their own divergences, by compromising with one another

The time has long since passed, however, when knowledge of their contentions could harm their accomplishment Their argument needs no apology More evident, even, than the ingenuity it reveals and the keenness of wit and depth of knowledge is the one thing that no one had to compromise The aim that was common to all was a government calculated for man's, every man's, happiness.

Because of this, Hamilton, whose own plan diverged more than any other from the finished Constitution, could write in *The Federalist* argument which today remains a classic exposition of the Constitution Luther Martin, who believed that the people of Maryland never would, or should, ratify the Constitution, could later become an ardent federalist Randolph, who would not sign the Constitution, could yet advocate its ratification in Virginia

Because of this, Franklin could say as the Convention closed "When you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best The opinions I have had of its errors, I sacrifice to the public good I have never whispered a syllable of them abroad Within these walls they were born, and here they shall die "

The authors of the Constitution were compelled to set up *some* organization and endow it with *some* power, and they were wise men, terribly afraid that they were creating a Frankenstein. The debate this involved was, in the Convention, the debate of man against man. Here, in this compilation, it is the debate of men against the arguments of time. The Constitution we have is contrasted with the constitutions we might have had.

Noting the argument only for those suggestions which were not accepted makes, of course, a lopsided picture of the Convention. It omits, for example, Dickinson's excellent remarks on the inadvisability of property qualifications for the members of Congress, Franklin's opposition to the restriction of suffrage to freeholders, and Madison's championship of the West. In these instances these gentlemen won their points, and what they thought time would prove has given way to what we think time has proved.

The Constitutional Convention grew out of a resolution of January 21, 1786, by the legislature of Virginia that several of its members be appointed commissioners to meet with such commissioners as might be appointed by the other states, for the purpose of considering "how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony" and for formulating an act relative to this object.

Since commissioners from only five states attended the meeting at Annapolis, the Convention merely made a report, suggesting that another convention be called and that the delegates be authorized to consider "other important matters" in addition to commercial regulations.

Acting upon this report, the Continental Congress resolved on February 21, 1787, that a convention be held in May at Philadelphia, "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union."

Delegates from every state except Rhode Island were appointed to the Convention, and business began on May 25, when the necessary quorum of seven states was represented. The proceedings, in accordance with a rule of the Continental Congress, were secret. Washington was

unanimously chosen president. Then, "in the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool, uninterrupted, and daily consultation" <sup>1</sup>

Four plans were presented to the Convention. Randolph's (the Virginia plan, drafted by Madison), Paterson's, Charles Pinckney's, and Hamilton's. Randolph's, which provided in a generalized way for a government national as well as federal, a legislature of two houses, a national executive of one or more persons, and a national judiciary, was the framework on which the Constitution was built. The principal conflict was between this plan and that of Paterson, which stuck closely to the Articles of Confederation and was espoused by those who feared a strong central government and unequal representation of states.

Hamilton's plan, which proposed such innovations as appointment of an executive and senators for life and implied reduction of the states to mere corporations, found little support. Pinckney's plan was similar in scope and general character to Randolph's. None of the plans contained much detail.

The resolutions embodied in Randolph's plan were discussed, contrasted with the provisions of Paterson's plan and with the ideas of the other members. Votes were taken by states, but it had been agreed that motions might be made to reconsider matters which had been determined by a majority, so that even after proposals were tentatively accepted, they were returned to again and again.

From time to time committees were appointed to study and report on particularly knotty provisions. In the notes of the Convention it is occasionally tantalizing to see that several incompatible suggestions were referred to a committee, and then to read the committee's report with no account of the discussion preceding the solution. Undoubtedly, however, much of the committee discussion was duplicated in the Convention, for hardly a suggestion made by any smaller committee was not thoroughly picked apart in Committee of the Whole.

On July 24, a Committee of Detail was appointed to prepare and report a constitution from the resolutions agreed to in the Convention. Its report, in which some of the familiar phrases of the final Constitution appear, became the new point of departure. The results of the subsequent discussion were committed to a Committee of Style & Arrangement, whose

<sup>1</sup> Jay, in *The Federalist*

report of September 12 differed in only a few details from the finished Constitution. On September 17 the Constitution was signed, and the rest was up to the people

McHenry reports in his notes for the following day, "A lady asked Dr. Franklin Well Doctor what have we got a republic or a monarchy A republic replied the Doctor if you can keep it "

In the notes of Madison, which are the principal source of this compilation, and also in those of Pierce, Yates, King, and McHenry, the members of the Convention are not directly quoted This compilation does not directly quote these notes However, speeches are taken verbatim from the notes as far as possible, consistent with clarity, a certain uniformity of presentation, and avoidance of repetition.

Arguments, or portions of arguments which reiterate reasons previously given, whether by the same delegate or another, are not included in most instances, so it must not be inferred that those listed here as speaking in favor of a suggestion complete the roster of those supporting it The aim has been, rather, to make a compendium of ideas.

## ARTICLE I

### SECTION I

*All legislative powers herem granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives*

**PATERSON** There should be only one house with equality of state suffrage. Within a particular state, where party heats prevail, a check may be necessary. In such a body as Congress, it is less necessary, and besides, the delegations of the different states are checks on each other. With proper powers, such a Congress will act with more energy and wisdom than the proposed national Legislature, being fewer in numbers and more secreted and refined by the mode of election. The other plan will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be 180. Add to it half as many members for the other branch, and you have 270 members coming once, at least, a year from the most distant as well as the most central parts of the republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? Let the people elect the state legislatures, the state legislatures elect the federal Legislature, assign to the state legislatures their duty, the same to the federal, and they will be checks upon each other, and the best checks that can be formed.

**LANSING** Two reasons may be assigned against the innovation: the want of competent powers in the Convention and the state of the public mind. The delegates to this Convention, however chosen, do not represent the people merely as so many individuals, but as forming a sovereign state. Mr. Randolph puts the opposite viewpoint on its true footing, namely that the public safety supersedes the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. Mr. Wilson contends that as the Convention is only to recommend, they might recommend what

they please Any act whatever of so respectable a body must have a great effect, however, and if it does not succeed, will be a source of great dissensions. There is no certain criterion of the public mind on the subject, but evidence of it is given by the opposition in the states to the scheme of an impost It cannot be expected that those possessing sovereignty can ever voluntarily part with it It is not to be expected from any one state, much less from thirteen The proposed system is too novel and complex. No man can foresee what its operation will be either with respect to the general government or the state governments One or the other, it has been surmised, must absorb the whole

MARTIN We are proceeding in forming this government as though there were no state governments at all I have never heard of a confederacy having two legislative branches The cornerstone of a federal government is equality of votes. States may surrender this right, but if they do, their liberties are lost The natural equality of individuals is lost in some degree when they become members of society, to which it is transferred, and this society by the name of state or kingdom is, with respect to others, again on a perfect footing of equality—a right to govern themselves as they please Nor can any other state, of right, deprive them of this equality. We must treat as free states with each other, upon the same terms of equality that men originally formed themselves into societies In a federal government, a majority of states must and ought to tax What is the government now forming, over states or persons? As to the latter, their rights cannot be the object of a general government—these are already secured by their guardians, the state governments The general government is therefore intended only to protect and guard the rights of the states as states The proposed general government is the first upon earth which gives checks against democracies or aristocracies The only necessary check in a general government ought to be a restraint to prevent its absorbing the powers of the state governments. Will the representatives of a state forget state interests? These prejudices cannot be eradicated—your general government cannot be just or equal upon the proposed plan unless you abolish state interests. Wherever new settlements have been formed in large states, they immediately want to shake off their independency because the government is too remote for their own good They want it nearer home.

FRANKLIN The Legislature should consist of one house, to be composed of an equal number of delegates from each state, with decisions to be by the majority of individual members voting

KING There should be three distinct legislative branches the second to check the first and to be proportionate to the population, the third to represent the states and have equal suffrage

HAMILTON The lower branch should be called the Assembly,

PINCKNEY The lower branch should be called the House of Delegates.

## SECTION 2

*The House of Representatives shall be composed of members chosen every second year*

SHERMAN Members of the first branch should be elected annually The representatives ought to return home and mix with the people By remaining at the seat of government, they will acquire the habits of the place, which might differ from those of their constituents, or there may be danger of catching the *esprit de corps*

ELLSWORTH The people are fond of frequent elections and might be safely indulged in one branch of the Legislature

WILSON It will not be inconvenient as the people in all the states have annual meetings

STRONG Except South Carolina, we are all accustomed to annual elections.

GERRY The people of New England will never give up the point of annual elections, they know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation Annual elections are the only defense of the people against tyranny.

JENIFER Elections for the first branch should be held every three years Too great frequency of elections renders the people indifferent to them,



and makes the best men unwilling to engage in so precarious a service.

MADISON Instability is one of the great vices of our republics, to be remedied. Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the states to which they do not belong. One year will be almost consumed in preparing for and traveling to and from the seat of national business.

HAMILTON Three years is not too long. A representative ought to have full freedom of deliberation and ought to exert an opinion of his own.

DICKINSON Triennial elections are preferable, but in order to prevent the inconvenience of an entire change of the whole number at the same time, terms should be rotated, with annual election of one third of the members

*. . . by the people of the several States, . . .*

SHERMAN Election should be by the state legislatures. The people immediately should have as little to do as may be about the government. They lack information and are constantly liable to be misled. If the state governments are to be continued, it is necessary in order to preserve harmony between the national and state governments, that the elections to the former should be made by the latter. The right of participation in the national government will be sufficiently secured to the people by their election of the state legislatures.

GERRY The evils we experience flow from the excess of democracy. The people do not lack virtue, but are the dupes of pretended patriots. In Massachusetts it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants.

PINCKNEY The people are less fit judges in such a case than the legislatures, and the legislatures will be less likely to promote the adoption of the new government if they are to be excluded from all share in it.

PATERSON If the sovereignty of the states is to be maintained, the representatives must be drawn immediately from the states, not from the people.

**RUTLEDGE** Election by the legislatures would be more refined than an election immediately by the people, and more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts, it is not to be supposed that such proper characters would have been preferred. The delegates to [the Continental] Congress have also been fitter men than would have been appointed by the people at large.

**MERCER.** The people cannot know and judge of the characters of candidates. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who, being dispersed, will scatter their votes among a variety of candidates.

**GENERAL PINCKNEY** The first branch should be elected in such manner as the legislature of each state shall direct. The legislature can then accommodate the mode to the convenience and opinions of the people. It will avoid the undue influence of large counties, which will prevail if the elections are to be made in districts, and otherwise, disputed elections must be referred to the general legislature, which would be attended with intolerable expense and trouble to the distant parts of the republic.

**GENERAL PINCKNEY** The first branch should be elected by the people, in such mode as the state legislatures shall direct.

**GERRY** The people should nominate a certain number, out of which the state legislatures should be bound to choose. Experience has shown that state legislatures drawn immediately from the people do not always possess their confidence. An election by the people should be so qualified that men of honor and character might not be unwilling to be joined in the appointments. The people could choose double the requisite number, the legislature to appoint out of them the authorized number of each state.

**MERCER** Candidates should be nominated by the state legislatures and elected by the people, who should not be left to make their choice without any guidance.

[No clause covering the following subject matter is included in the Constitution.]

RANDOLPH Representatives should be subject to recall.

*. and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature*

MORRIS The right of suffrage should be restrained to freeholders The clause as it stands makes the qualifications of the national legislature depend on the will of the states, which is not proper Aristocracy will grow out of the House of Representatives, give the votes to people who have no property and they will sell them to the rich who will be able to buy them The time is not distant when this country will abound with mechanics and manufacturers who will receive their bread from their employers Will such men be the secure and faithful guardians of liberty? The man who does not give his vote freely is not represented It is the man who dictates the vote Children do not vote, because they lack prudence, because they have no will of their own The ignorant and the dependent can be as little trusted with the public interest The difficulty of defining freeholders is not insuperable Still less will the restriction be unpopular Nine tenths of the people are at present freeholders and will be pleased with it As to merchants, etc , if they have wealth and value the right, they can acquire it If not, they don't deserve it

DICKINSON The freeholders are the best guardians of liberty The restriction of the right to them is a necessary defense against the dangerous influence of those multitudes without property and without principle with which our country, like all others, will in time abound Freeholds are by our laws of inheritance divided among the children of the deceased, and will be parcelled out among all the worthy men of the state The merchants and mechanics may become freeholders, and without being so, they are electors of the state legislatures, who appoint the senators of the United States

MADISON In several of the states a freehold is now the qualification The freeholders of the country will be the safest depositories of republican liberty In future time a great majority of the people will not only be without landed, but any other sort of property These will either combine under the influence of their common situation, in which case the rights of property and the public liberty will not be secure in their hands,

or what is more probable, they will become the tools of opulence and ambition, in which case there will be equal danger on another side

ELLSWORTH Every man who pays a tax ought to vote for the representative who is to levy and dispose of his money Taxation and representation ought to go together

MORRIS It should be left to the state legislatures to establish the qualifications of the electors, or power should be given to the national legislature to alter the qualifications

*No person shall be a representative who shall not have attained to the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen*

WILSON There should be no age requirement The rights of election are abridged, whether the abridgement is done by disqualifying the objects of choice or the persons choosing The motion tends to damp the efforts of genius and of laudable ambition There is no more reason for incapacitating youth than age, where the requisite qualifications are found Many instances might be mentioned of signal services rendered in high stations to the public before the age of twenty-five The present Mr Pitt and Lord Bolingbroke are striking instances.

HAMILTON The citizenship requirement should be so altered as to require merely citizenship and inhabitancy The right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject, which will answer every purpose When possible, the government should not be embarrassed with minute restrictions On the one hand there are dangers On the other side, the advantage of encouraging foreigners is obvious and admitted Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first citizens

RUTLEDGE FOR THE COMMITTEE OF DETAIL Three years citizenship should be required.

WILSON The citizenship requirement should be four years. It is very proper that the electors govern themselves by requiring a longer period, but unnecessary and improper that the Constitution should chain them down to it.

CARROLL. Five years citizenship should be required.

WILLIAMSON. Nine years citizenship should be required. The country should acquire, as fast as possible, national habits. Wealthy emigrants do more harm by their luxurious examples, than good by the money they bring with them.

GERRY. The eligibility should in future be confined to natives. Foreign powers will meddle in our affairs and spare no expense to influence them. Persons having foreign attachments will be sent among us and insinuated into our councils, in order to be made instruments for their purposes. Everyone knows the vast sums laid out in Europe for secret services.

MORRIS. A proviso should be added to the citizenship clause for representatives, that the limitation of seven years citizenship shall not affect the rights of any person now a citizen.

MERCER. This proviso is necessary to prevent a disenfranchisement from their actual level in all respects with the natives, of persons who have become citizens under the faith and according to the [state] laws and constitution.

GORHAM. When foreigners are naturalized, they stand on an equal footing with natives. The propriety of giving a retrospective force to the restriction is doubtful.

MADISON. It is said that the *United States* as such have not pledged their faith to naturalized foreigners and therefore are not bound. Be it so, and that the states alone are bound. Who are to form the new Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the states the agents? Will they not be the members of it? Did they not appoint the Convention? Are they not to ratify its proceedings? Will not the new Constitution be their act? If the new Constitution then violates the faith pledged to any description of people, will not the makers of it, will not the states, be the violators? This is a

matter of real importance. It will expose us to the reproaches of all those who shall be affected by it, reproaches which will soon be echoed from the other side of the Atlantic, and will necessarily enlist among the adversaries of the reform a very considerable body of citizens. We should, moreover, reduce every state to the dilemma of rejecting it or of violating the faith pledged to a part of its citizens.

**WILSON** The constitution of Pennsylvania gives to foreigners after two years' residence all the rights whatsoever of citizens, and combined with the Article of Confederation making the citizens of one state citizens of all, this puts Pennsylvania under obligation to maintain the faith thus pledged to her citizens of foreign birth. Her failure would authorize just complaints. The princes and states of Europe would avail themselves of such a breach of faith to deter their subjects from emigrating to the United States.

**MORRIS** A freehold, rather than residence or inhabitance in the state, should be required for representatives. Great disputes are occasioned by the terms "inhabitant" and "resident," which are decided by the arbitrary will of the majority. A regulation requiring inhabitancy is not necessary. People rarely choose a non-resident. The regulation is improper as in the first branch *the people at large*, not the *states*, are represented.

**DICKINSON** The clause should read "inhabitant, actually resident" for a certain period of years.

**ELLSWORTH** One year's residence in the state should be required. This would be sufficient and some fixed term of previous residence would be proper.

**MASON** The requirement is a valuable principle. If residence is not required, rich men of neighboring states may employ with success the means of corruption in some particular district and thereby get into the public councils after having failed in their own states. This is the practice in the boroughs of England.

**BUTLER** Three years of previous inhabitancy should be required.

**RUTLEDGE** A residence of seven years in the state should be required. An emigrant from New England to South Carolina or Georgia would

know little of its affairs, and could not be supposed to acquire a thorough knowledge in less time

MASON Certain qualifications of landed property should be required of representatives

PINCKNEY It is essential that members of the Legislature should be possessed of competent property to make them independent and respectable. It is prudent, when such great powers are to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. It should be provided that members of the Legislature be required to swear they are respectively possessed of a clear, unencumbered estate to the amount of a specified sum.

GERRY If property be one object of government, provisions to secure it cannot be improper

MADISON The word "landed" should be struck out before the property qualification. Landed possessions are no certain evidence of real wealth. Many enjoy them to a great extent who are more in debt than they are worth. The unjust laws of the states have proceeded more from this class of men than any others. It has often happened that men who have acquired landed property on credit, get into the legislature with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of land should be made the standard, it would be no security, if a large one, it would exclude the proper representatives of those classes of citizens who are not landholders. The three principal classes into which our citizens are divisible are the landed, the commercial and the manufacturing. The second and third classes bear as yet a small proportion to the first. The proportion, however, will daily increase. These classes understand much less of each others' interests and affairs than men of the same class inhabiting different districts. For these reasons, if it is possible, some other criterion than the mere possession of land should be devised. Qualifications in the electors will probably be more effectual than in the elected, however. The former will discriminate between real and ostensible property in the latter.

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be provided that the Legislature shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as the Legislature shall deem expedient.

MORRIS "With regard to property" should be struck out, in order to leave the Legislature entirely at large

RUTLEDGE Qualifications [of property] for members of the Legislature should be the same as for members of the state legislatures

MORRIS Qualifications of the elected should be established by the state legislatures, or a clause should be added giving to the national legislature powers to alter the qualifications.

MASON Persons having unsettled accounts with, or being indebted to, the United States should be excluded from being members of the Legislature. Persons of this description have frequently gotten into state legislatures in order to promote laws that might shelter their delinquencies, and this has even crept into [the Continental] Congress, if report is to be regarded.

MADISON The exclusion should be limited to those persons who have received money from the government and not accounted for it

GERRY Pensioners should be disqualified from membership in the Legislature.

*Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons*

PINCKNEY It should be provided that the House of Representatives shall consist of one member for every thousand inhabitants, three fifths of blacks included

RANDOLPH. Representatives should be proportioned to the number of free inhabitants

SHERMAN Why should the blacks, who are property in the South, be in the rule of representation more than the cattle and horses of the North?

PATERSON Has a man in Virginia a number of votes in proportion to the number of his slaves? If negroes are not represented in the states to which they belong, why should they be represented in the general government?



The true principle of representation is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people were actually to take place, would the slaves vote? This clause will also be an indirect encouragement of the slave trade.

**MADISON** In the first branch the states should be represented according to their number of free inhabitants, and in the second according to the whole number, including slaves. By this arrangement the southern scale will have the advantage in one house, the northern in the other.

**KING** Admission of the blacks will excite great discontent among the states having no slaves.

**MORRIS**. Free inhabitants only should be represented. Much depends on this point. Slavery is a nefarious institution. It is the curse of heaven on the states where it prevails. The moment you leave the eastern states and enter New York, the effects of the institution become visible. Passing through the Jerseys and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly and every step you take through the great region of slaves presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that slaves shall be computed in the representation? Are they men? Then make them citizens and let them vote. Are they property? Why, then, is no other property included? The houses in Philadelphia are worth more than all the wretched slaves which cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey who views with a laudable horror so nefarious a practice. I would sooner submit myself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution.

**BUTLER** Blacks should be included in the rule of representation equally with the whites.

**JOHNSON** Wealth and population are the true, equitable rules of repre-

sentation. These two principles resolve themselves into one, population being the best measure of wealth. Therefore, the number of people ought to be established as the rule, and all descriptions, including blacks equally with the whites, ought to fall within the computation.

GENERAL PINCKNEY To include blacks equally with whites in the ratio of representation is nothing more than justice. The blacks are the laborers, the peasants of the southern states. They are as productive of pecuniary resources as those of the northern states. They add equally to the wealth, and considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the northern states, as taxation is to keep pace with representation.

RANDOLPH Representatives should be proportioned to the states' quotas of contributions.

BUTLER Money is power, and the states ought to have weight in the government in proportion to their wealth.

RUTLEDGE The justice of this rule cannot be contested. Property is the object of society. The representation should therefore be in proportion to the taxes paid in given districts—let the property be represented. Numbers are not a true index of wealth even now, hereafter they will become less so. If numbers should be made the rule of representation, the Atlantic states will be subjected to the western. The western states will not be able to contribute in proportion to their numbers, they should not, therefore, be represented in that proportion.

DICKINSON It should be provided that the rule of representation shall be according to the taxes and contributions of each state, *actually* collected and paid into the national treasury. By thus connecting the interests of the states with their duty, the latter will be sure to be performed.

MORRIS Property should be taken into the estimate, as well as the number of inhabitants. Life and liberty are generally said to be of more value than property. An accurate view of the matter will, nevertheless, prove that property is the main object of society. The savage state is more favorable to liberty than the civilized, and sufficiently so to life. It is preferred by all men who have not acquired a taste for property, it is only renounced for the sake of property which can be secured by the restraints of regular government. If property, then, is the main object of

government, certainly it ought to be one measure of the influence due to those who are to be affected by the government. Numbers might, with greater propriety, be deemed a measure of strength rather than of wealth, yet the late defense made by Great Britain against her numerous enemies proves in the clearest manner that it is entirely fallacious even in this respect.

GERRY Representation should be in the combined ratio of numbers of inhabitants and of wealth, and not of either singly

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BUTLER Property is the only just measure of representation. This is the great object of government, the great cause of war, the great means of carrying it on.

GORHAM FOR THE COMMITTEE OF JULY 6 There should be no set rule. The number of blacks and whites with some regard to supposed wealth should be the general guide for the initial apportionment, with alterations to be made by the Legislature from time to time, as justice and propriety might require. (In case any of the states shall hereafter be divided or any two or more states united, or any new states created within the limits of the United States.) The number will be small in the first instance and may be continued so, and the Atlantic states having the government in their own hands, may take care of their own interest by dealing out the right of representation in safe proportions to the western states.

DICKINSON The number of representatives to be allowed to the large states should be limited. Unless this is done, the small states will be reduced to entire insignificance, and encouragement given to the importation of slaves.

MORRIS The number of representatives which the Atlantic states shall respectively have and the number which each new state will have should be irrevocably fixed. This will not be unjust, as the western settlers will previously know the conditions on which they are to possess their land. It will be politic as it will recommend the plan to the present, as well as future, interest of the states which must decide the fate of it. The

new states will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the community in wars, the burdens and operations of which will fall chiefly on the maritime states. The western country will not be able to furnish men equally enlightened, to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, is the proper school of political talents. If the western people get the power into their hands, they will ruin the Atlantic interests. The back members are always most averse to the best measures.

**GERRY** It should be provided that in order to secure the liberties of the states already confederated, the number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this confederation. The western states will, if they acquire power, like all men abuse it. They will oppress commerce and drain our wealth into the western country. There is a rage for emigration from the eastern states to the western country, and those remaining behind should not be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there.

**WILLIAMSON** Representation ought to be according to the rule of numbers, but if the property of the western states should not be rated as high as that of the Atlantic states, then their representation ought not to hold a like proportion.

**ELLSWORTH** It should be provided that the rule of contribution by direct taxation shall be the number of white inhabitants and three fifths of every other description in the several states, until some other rule that shall more accurately ascertain the wealth of the several states can be devised and adopted by the Legislature.

**FRANKLIN** The weakest state should say what proportion of money or force it is able and willing to furnish, and all others should furnish an equal proportion, and if these supplies should on occasions not be sufficient, let Congress make requisitions on the richer and more powerful states for further aids, to be voluntarily afforded, leaving to each state the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

*The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, . . .*

RANDOLPH It should be required that a census and estimate be taken within one year after the first meeting of the Legislature

RANDOLPH It should be specified that a census shall be taken within two years after the first meeting of the Legislature.

GENERAL PINCKNEY It should be provided that the first census shall be taken within six years of the first meeting of the Legislature

*. . . and within every subsequent term of ten years, in such manner as they shall by law direct.*

ANONYMOUS It should be specified that the census shall be taken within every subsequent term of fifteen years

MADISON To the provision for a census every fifteen years should be added the words, "at least "

WILSON The period for the census should be five, seven, or ten years

RANDOLPH The census should be of population and wealth

MORRIS A census should not be required. It will fetter the Legislature too much Advantage may be taken of it in time of war or the apprehension of it, by new states, to extort particular favors If the mode is to be fixed for taking a census, it might certainly be extremely inconvenient, if unfixed, the Legislature may use such a mode as will defeat the object and perpetuate the inequality Such shackles on the legislature have been found very pernicious in most of the state constitutions It is dangerous to throw such a preponderance into the western scale, since in time the western people will outnumber the Atlantic states It should be in the power of the latter, therefore, to keep a majority of the vote in their own hands. It is objected that if the Legislature is left at liberty, they will never readjust the representation. This is possible, but not probable unless the

reasons against a revision of it are very urgent, and in this case it ought not to be done. If we can't agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come? Surely those who come after us will judge better of things present, than we can of things future.

READ The Legislature ought not to be too much shackled. It will make the Constitution like religious creeds, embarrassing to those bound to conform to them and more likely to produce dissatisfaction and schism, than harmony and union.

MORRIS FOR THE COMMITTEE OF JULY 6 It should be provided that in case any of the states shall hereafter be divided, or any two or more states united, or any new states created within the limits of the United States, the Legislature shall possess authority to regulate the numbers of representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants.

*The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative,*

SHERMAN It should be provided that the number of representatives shall not exceed one for every forty thousand.

*. . . and until such enumerations shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three*

MORRIS FOR THE COMMITTEE OF JULY 6 At the first meeting of the Legislature, the first branch should be constituted as follows: New Hampshire two, Massachusetts seven, Rhode Island one, Connecticut four, New York five, New Jersey three, Pennsylvania eight, Delaware one, Maryland four, Virginia nine, North Carolina five, South Carolina five, Georgia two.

**RUTLEDGE** New Hampshire should be reduced from three to two members. Her numbers do not entitle her to three, and it is a poor state

**WILLIAMSON** New Hampshire should have only two representatives. Three members were allotted her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she is still absent, and has no opportunity of deciding whether she would choose to retain the number on the condition of her being taxed in proportion to it,<sup>1</sup> the number ought to be reduced from three to two.

**GENERAL PINCKNEY** Six representatives each, instead of five, should be allowed North Carolina and South Carolina

**SHERMAN** When the Committee of Eleven reported the apportionment, five representatives were thought the proper share of North Carolina. Subsequent information, however, seems to entitle that state to another

**GENERAL PINCKNEY** Georgia should be allowed four instead of three representatives, because of the unexampled celerity of its population

**BEDFORD** Delaware's representation should be increased.

**GERRY** Massachusetts should have more representatives

**WILLIAMSON** Rhode Island should have more than one representative, due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

**KING** The allotment should be changed. The four eastern states, having 800,000 souls, have one third fewer representatives than the four southern states, having not more than 700,000 souls, rating the blacks as five for three. The eastern people will advert to these circumstances and be dissatisfied. Because the difference of interest lies between the southern and eastern states, it is proper to yield something in the proportion of

<sup>1</sup> A motion was under discussion that until the first census, direct taxes should be assessed on the inhabitants of the several states according to the number of representatives respectively in the first branch

representatives for the security of the southern No principle will justify the giving them a majority

**WILLIAMSON** Representation of some states should be reduced The southern interest must be extremely endangered in the present arrangement. The northern states are to have a majority in the first instance.

**SHERMAN** Fifty representatives are preferable to sixty-five The great distance they will have to travel will render their attendance precarious, and will make it difficult to prevail on a sufficient number of fit men to undertake the service The expected increase from new states also deserves consideration

**GERRY** The number should be increased beyond sixty-five. The larger the number, the less the danger of their being corrupted. The people are accustomed to, and fond of, a numerous representation, and will consider their rights as better secured by it The danger of excess in the number may be guarded against by fixing a point within which the number shall always be kept

**MASON** Thirty-eight will probably, as being a majority of sixty-five, form a quorum Twenty will make a majority of thirty-eight This is certainly too small a number to make laws for America They will neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people After doubling the number, the laws might still be made by so few as to be almost objectionable on that account

**READ** Two of the states will have but a single member if the aggregate number shall remain at sixty-five, and in case of accident to either of these, one state would have no representative present to give explanations or information of its interests or wishes The people will not place their confidence in so small a number As to the new states, the highest number of representatives for the whole might be limited, and all danger of excess thereby prevented

**WILLIAMSON** An addition of one half generally should be made to the number allotted to the respective states, and the smallest state should have two.



MADISON The number allowed to each state should be doubled. The additional expense is too inconsiderable to be regarded in so important a case. And as far as the augmentation might be unpopular on that score, the objection is overbalanced by its effect on the hopes of a great number of the popular candidates.

GERRY FOR THE COMMITTEE OF JULY 2 It should be provided that each of the states now in the Union shall be allowed one member for every forty thousand inhabitants, and each state not containing that number shall be allowed one member.

*When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies*

*The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment*

PINCKNEY Impeachments should not issue from the Legislature, who will in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular will be rendered altogether insignificant.

RANDOLPH Some preliminary inquest should be required, as to whether just grounds of impeachment exist

RUTLEDGE Persons impeached should be suspended from their offices until they be tried and acquitted

### SECTION 3

*The Senate of the United States shall be composed of two senators from each state, . . .*

SHERMAN One member should represent each state.

**MORRIS** Each state should have three members. The Senate should be a pretty numerous body. If two members only are allowed, and a majority is made a quorum, power will be lodged in fourteen members, which is too small a number for such a trust.

**WILLIAMSON** There should be twenty-five senators, with each state having at least one. Twenty-five is a small and convenient number.

**DICKINSON** The number of senators should be more than two hundred. By enlarging their number, their influence and weight will be increased by combining the families and wealth of the aristocracy and thereby you will establish a balance against, and a check of, the democracy.

**PINCKNEY** The states should be divided into three classes, according to their respective sizes, with the first class allowed three members, the second two, and the third one. An estimate should be taken of the comparative importance of each state at fixed periods, so as to ascertain the number of members they may be entitled to. This will prevent the large states from administering the general government as they please, without being themselves unduly subjected to the will of the smaller.

**WILSON** There should be one senator for every 100,000 people, and states not having that many inhabitants should be allowed one senator. If the smallest states be allowed one, and the others in proportion, the Senate will certainly be too numerous. In time the smallest state will contain 100,000 souls at least. This temporary concession may be a ground of compromise.

**PINCKNEY** The states should be represented in the Senate as follows. New Hampshire two, Massachusetts four, Rhode Island one, Connecticut three, New York three, New Jersey two, Pennsylvania four, Delaware one, Maryland three, Virginia five, North Carolina three, South Carolina three, Georgia two, making thirty-six altogether.

**PINCKNEY:** The continent should be divided into four districts, out of which the Senate should be chosen.

BREARLEY A map of the United States should be spread out, all existing boundaries erased, and a new partition of the whole be made into thirteen equal parts This is the only device by which the state equality of votes may be preserved, without unfairness to the larger states

PATERSON The only expedient that will cure the difficulty is that of throwing the states into hotchpot To say that this is impracticable will not make it so

MADISON The obliteration of boundaries should be optional, with the small states wishing bigger representation permitted to unite

MARTIN Instead of a junction of the small states, a division of the large ones would be more eligible as a remedy

MADISON The states should be represented in one branch according to the number of free inhabitants only, and in the other according to the whole number, counting the slaves as if free The great division of interests in the United States does not lie between the large and small states, but between the northern and southern, and if any defensive power is necessary, it ought to be mutually given to these two interests By this arrangement, the southern scale will have the advantage in one house, *and the northern in the other. The second branch has for one of its primary objects the guardianship of property, and should be represented according to the whole number, including slaves*

BALDWIN The second branch should be the representative of property, and in forming it some reference should be had to the relative wealth of their constituents

WILLIAMSON The second branch should be proportioned to the first branch in the ratio of 1 to ———

WILSON The right of suffrage ought to be according to the same rule as for the first branch [free inhabitants, excluding Indians not taxed, and three fifths of all others] If the government is not laid on this foundation, it can be neither solid nor lasting Any other principle will be local, confined and temporary This will expand with the expansion and grow with the growth of the United States It is part of the definition of tyranny that the smaller number governs the greater It is true that a majority of states in the second branch cannot carry a law against a majority of people

in the first. But this removes half only of the objection. In districts as large as the states, the number of people is the best measure of their comparative wealth. Each man is naturally a sovereign over himself and all men are therefore naturally equal. He cannot retain this equality when he becomes a member of civil government. As little can a sovereign state when it becomes a member of a federal government.

**KING** The proposed government is to be substantially and formally a general and national government over the people of America. There never will be a case in which it will act as a federal government on the states and not on the individual citizens. And is it not a clear principle that in a free government those who are to be the objects of government ought to influence the operations of it? The general government can never wish to intrude on the state governments. There can be no temptation.

**MADISON** A combination of the large states must arise either from some interest common to Virginia, Massachusetts and Pennsylvania, distinguishing them from the other states, or from the mere circumstance of *similarity of size*. *Experience suggests no such danger*. Among individuals of superior eminence and weight in society, rivalships are much more frequent than coalitions. If the states have equal votes and influence in the Senate, we shall be in the utmost danger, the minority of people will govern the majority. The fear of innovation, the hue and cry in favor of the liberty of the people, will, as they have done, prevent the necessary reforms. The small states may be near the seat of government. A bare quorum of the House of Representatives may be easily assembled and carry a bill against what would be the sense of the majority if all were present, and the Senate, though all are present, might confirm such a bill. The evil of an equality of vote, instead of being cured by time, will increase with every new state that shall be admitted. The perpetuity it will give to the preponderance of the northern states over the southern is a serious consideration. There are five states on the southern, eight on the northern side of the line formed by the institution of slavery and its consequences. Should a proportional representation take place, the northern side will still outnumber the other, but not in the same degree at this time, and every day will tend toward an equilibrium.

**MORRIS** When England pressed hard upon us, the small states said, go on with your opposition or give us an equal vote, and so they obtained it.

And now they call the Confederation, made under these circumstances, a sacred compact that cannot be changed

*. . . chosen by the legislature thereof, . . .*

RANDOLPH The members of the Senate should be elected by the first branch out of a proper number of persons nominated by the state legislatures. By this device, the check will be complete.

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PINCKNEY The Senate [to be chosen from four districts] should be elected by the House of Representatives, either from themselves or the people at large.

READ The Senate should be appointed by the Executive out of a proper number of persons to be nominated by the individual legislatures. Nothing short of this approach toward a proper model of government will answer the purpose

MORRIS The Executive should appoint the senators [for life] and fill up vacancies. A government by states is going back to mere treaty. It is no government at all. It will act over again the part which [the Continental] Congress has acted

HAMILTON Senators should be elected by electors chosen for that purpose by the people. For this purpose the states should be divided into election districts

WILSON The general government is not an assemblage of states but of individuals for certain political purposes, the individuals, therefore, not the states, ought to be represented in it

WILSON The Senate should be elected by the people, in election districts formed by uniting several of the election districts for the first branch. This method will be most likely to obtain men of intelligence and uprightness. If one branch of the government is chosen by the state legislatures and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. The national government should be independent of the state governments

in order to make it vigorous. All confederacies have been destroyed by the growth and ambition of some of their members, and if the state legislatures appoint the senators, the principle will be received by which the ancient confederacies were ruined. Every man will possess a double character. He will be a citizen of a particular state and also of the United States. The national Legislature will apply to the latter and should therefore be chosen by the citizens of the United States, and not by the state legislatures, because the latter are particularly chosen on account of their state citizenship and attachments. They have a remote connection with the general government and a direct and intimate one with that of the several states. In whatever concerns the questions confided to the general government [war, peace, commerce, revenue] we act as citizens of the United States, and in relation to the interests intrusted to the state governments, we act as citizens of the respective states.

. . . for six years, .

**PIERCE** Senators should be chosen for three years. Too long a continuance is dangerous, as is evidenced by the evils arising in the British parliaments from their septennial duration and the clamors against it there by the real friends of the country.

**GORHAM** Senators should be chosen for a term of four years, one quarter to be elected every year.

**GENERAL PINCKNEY** A longer term will fix the senators at the seat of government. They will acquire an interest there, perhaps transfer their property and lose sight of the states they represent. Under these circumstances, the distant states would labor under great disadvantage.

**SHERMAN** A bad government is the worse for being long. Frequent elections give security and even permanency. In Connecticut we have existed 132 years under an annual government, and as long as a man behaves himself well, he is never turned out of office. Four years to the Senate is quite sufficient when you add to it the rotation proposed.

**SHERMAN** Senators should be chosen for five years. This term would be between the terms of the first branch and that of the Executive.<sup>2</sup> This

<sup>2</sup> At this point the Executive's term had been tentatively determined as seven years.

principle is grounded on the fact that the senators, if they do their duty well, will be re-elected.

**GERRY:** A longer term will defeat itself. It will never be adopted by the people, who will never agree to a plan which seems to make an approach to monarchy.

**ANONYMOUS.** The Senate term should be five years, with a biennial rotation.

**SPAIGHT:** Senators should be elected for seven years

**RANDOLPH** The democratic licentiousness of the state legislatures proves the necessity of a firm Senate. If it be not a firm body, the other branch, being more numerous and coming directly from the people, will overwhelm it. A firmness and independence may be the more necessary also in this branch, as it ought to guard the Constitution against encroachments of the Executive, who will be apt to form combinations with the demagogues of the popular branch.

**MADISON** This branch is a check on the democracy. It cannot, therefore, be made too strong.

**READ** The senatorial term should be nine years, with one third going out triennially. The Senate should be so constituted as to have the feelings of citizens of the whole. It is to the interest of the small states that we become one people as much as possible, and that state attachments be extinguished as much as possible.

**MADISON** A considerable duration should be given the Senate. An increase of population will, of necessity, increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country, but symptoms of a leveling spirit, as we have understood, have sufficiently appeared in certain quarters to give notice of the future danger. How is this danger to be guarded against on republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded against? Among other means by the establishment of a body in the government sufficiently respectable for its wisdom and virtue, to aid on such emer-

gences the preponderance of justice, by throwing its weight into that scale. The term of nine years cannot threaten any real danger, but it should probably be required that the long term allowed to the second branch should not commence till such a period of life as will render a perpetual disqualification to be re-elected little inconvenient either in a public or private view

**WILSON** The Senate will probably be the depository of the powers concerning wars and treaties, and should therefore be made respectable in the eyes of foreign nations. The true reason why Great Britain has not yet listened to a commercial treaty with us has been because she has no confidence in the stability or efficacy of our government. Nine years, with a rotation, will provide these qualities. The popular objection against appointing any public body for a long term is that it might by gradual encroachments prolong itself first into a body for life, and finally become a hereditary one. *It would be a satisfactory answer to this objection that as one third will go out triennially, there will be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses*

**HAMILTON** The Senate should hold their places for life, or at least during good behavior. On this plan we should have a permanent will, a weighty interest, which would answer essential purposes.

**MORRIS** The Senate should be independent. In religion the creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body should be as independent and firm as the democratic. To make it independent, it should be for life. It will then do wrong, it is said. It is to be hoped so. The rich will strive to establish their dominion and enslave the rest. They always have, they always will. The proper security against them is to form them into a separate interest. The two forces will then control each other. Let the rich mix with the poor in a commercial country, they will establish an oligarchy. If we change our measures nobody will trust us, and how avoid a change of measures but by avoiding a change of men. Loaves and fishes must bribe the demagogues. A senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose and defeat the plan. The schemes of the rich will be favored by the extent of the country. The people in such distant parts cannot communi-



cate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments will be a select and sagacious body of men instituted to watch against them on all sides.

*. . . and each senator shall have one vote.*

SHERMAN: Each state should have one vote.

MARTIN: To provide for voting per capita is to depart from the idea of the states being represented in the second branch.

FRANKLIN: Each state should send an equal number of delegates to the Senate, and each state should have an equal voice in questions affecting sovereignty or authority of individual states and in appointment of officers, but in questions of salaries and allowances for public services and generally in all appropriations and dispositions of money to be drawn out of the general treasury, each state should have suffrage in proportion to state contributions to the national treasury

*Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year, . . .*

JOHNSON FOR THE COMMITTEE OF STYLE It should be provided that the senators shall be divided into classes by lot

GORHAM The rotation should be triennial.

WILSON A certain proportion of senators should be dismissed annually

*. . . and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the*

*next meeting of the legislature, which shall then fill such vacancies*

**WILSON** Vacancies in the Senate should not be supplied by the executives of the states. It is unnecessary, as the legislatures will meet so frequently. It removes the appointment too far from the people, the executives in most of the states being appointed by the legislatures.

**WILLIAMSON** To the clause giving power to the state executives to fill vacancies during the recess of the legislature, should be added the words, "unless other provision shall be made by the legislature" [of the state].

*No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen*

**ANONYMOUS** The age requirement should be struck out.

**MADISON** The long term <sup>3</sup> allowed to the second branch should not commence till such a period of life as would render a perpetual disqualification to be re-elected little inconvenient either in a public or private view.

**MADISON** No citizenship requirement should be fixed by the Constitution. It is unnecessary because the national Legislature is to have the right of regulating naturalization and can therefore fix different periods of residence as conditions of enjoying different privileges of citizenship. It is improper because it will give a tincture of illiberality to the Constitution, because it will put it out of the power of the national Legislature, even by special acts of naturalization, to confer the full rank of citizen on meritorious strangers, and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our governments, great numbers of respectable Europeans—men who love liberty and wish to partake its blessings, will be ready to transfer their fortunes hither. All such will feel the mortification of being marked with

<sup>3</sup> A term of nine years was under consideration.

suspicious incapacitations, even if they do not covet the public honors. It is not likely that any dangerous number of strangers will be appointed by the state legislatures if they are at liberty to do so, nor that foreign powers will make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances will rather stifle, than excite, *jealousy and watchfulness in the public.*

WILSON Such an exclusion is one of the most galling chains which the human mind can experience. The corrupt of other countries will not come here. Those who are tired of opposing such corruptions will

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be provided that every member of the Senate shall have been a citizen in the United States for at least four years before his election

RANDOLPH The citizenship requirement should be no more than seven years. The language held by our patriots during the Revolution and the principles laid down in all our American constitutions should be remembered. Many foreigners have fixed their fortunes among us under the faith of these invitations. All persons under the description, with all others who will be affected by a regulation disabling them from participating in the public honors <sup>4</sup> will enlist themselves under the banners of hostility to the proposed system

GENERAL PINCKNEY The citizenship requirement should be ten years

MORRIS Senators should be required to have been thirteen years a citizen

MORRIS The citizenship requirement should be fourteen years. The lesson we are taught is that we should be governed as much by our reason and as little by our feelings as possible. The language of reason on this subject is that we should not be polite at the expense of prudence. The privileges which emigrants will enjoy among us, though they shall be deprived of that of being eligible to the great offices of government, exceed the privileges allowed to foreigners in any part of the world. As every society, from a great nation down to a club, has the right of declaring the conditions on which new members shall be admitted, there

<sup>4</sup> A requirement of fourteen years was under discussion.

can be no room for complaint. As to those philosophical gentlemen, those *citizens* of the world, as they call themselves, I do not wish to see any of them in our public councils. I would not trust them. The men who can shake off their attachments to their own country can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France, an Englishman, and he will feel an equal bias in favor of that of England. It has been said that the legislatures will not choose foreigners, at least improper ones. There is no knowing what legislatures will do. Some appointments made by them prove that everything ought to be apprehended from the cabals practiced on such occasions. Foreigners cannot learn our laws or understand our Constitution under fourteen years. Seven years are requisite to learn to be a shoemaker, and double this term will be necessary to learn to be an American legislator. It would be preferable to confine the senators to natives, except for the appearance of such a requirement and the effect it might have against the system.

**PINCKNEY** As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments.

**BUTLER** Foreigners bring with them not only attachments to other countries, but ideas of government so distinct from ours that in every point of view they are dangerous. If I, myself, had been called into public life within a short time after coming to America,<sup>7</sup> my foreign habits, opinions and attachments would have rendered me an improper agent in public affairs. Great strictness is observed in Great Britain on this subject.

**MASON** If possible, it would be preferable to confine membership in the Senate to natives, with the exception of those foreigners who have taken a part and borne with the country the dangers and burdens of war.

**MASON** There should be a landed property qualification for members of the Senate. One important object in constituting the Senate is to secure the rights of property. To give the senators weight and firmness for this purpose, a considerable duration in office is thought necessary. But a

<sup>7</sup> Butler, born in County Carlow, Ireland, settled in South Carolina after his marriage in 1771.

longer term than six years would be of no avail in this respect if needy persons are appointed. Such a qualification would be very practicable, as the rules of taxation will supply a scale for measuring the degree of wealth possessed by every man.

**PINCKNEY** It is essential that members of the Legislature should be possessed of competent property to make them independent and respectable. It is prudent, when such great powers are to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. It should be provided that members of the Legislature be required to swear they are respectively possessed of a clear, unencumbered estate to the amount of a specified sum.

**MORRIS** History proves that the men of large property will uniformly endeavor to establish tyranny. How, then, shall we ward off this evil? Give them the second branch, and you secure their weight for the public good. They become responsible for their conduct and this lust of power will ever be checked by the democratic branch and thus form a stability in your government.

**GERRY** If property be one object of government, provisions to secure it cannot be improper.

**MADISON** The word "landed" should be struck out before the property qualification. Landed possessions are no certain evidence of real wealth. Many enjoy them to a great extent who are more in debt than they are worth. The unjust laws of the states have proceeded more from this class of men than any others. It has often happened that men who have acquired landed property on credit, get into the legislature with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of land should be made the standard, it would be no security, if a large one, it would exclude the proper representatives of those classes of citizens who are not landholders. The three principal classes into which our citizens are divisible are the landed, the commercial and the manufacturing. The second and third classes bear as yet a small proportion to the first. The proportion, however, will daily increase. These classes understand much less of each others' interests and affairs than men of the same class inhabiting different districts. For these reasons, if it is possible, some other criterion than the mere possession of land should be devised. Qualifications in the electors will probably be more ef-

fectual than in the elected, however The former will discriminate between real and ostensible property in the latter <sup>6</sup>

**RUTLEDGE** FOR THE COMMITTEE OF DETAIL It should be provided that the Legislature shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as the Legislature shall deem expedient

**MORRIS** "With regard to property" should be struck out, in order to leave the Legislature entirely at large

**RUTLEDGE** Qualifications [of property] for members of the Legislature should be the same as for members of the state legislatures

**MASON** Persons having unsettled accounts with, or being indebted to, the United States should be excluded from being members of the Legislature Persons of this description have frequently gotten into state legislatures in order to promote laws that might shelter their delinquencies, and this has even crept into [the Continental] Congress, if report is to be regarded.

**MADISON** The exclusion should be limited to those persons who have received money from the government and not accounted for it.

**GERRY** Pensioners should be disqualified from membership in the Legislature

*The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.*

<sup>6</sup> These views were given July 26 Yates quotes Madison as having said, on June 26 "Our government ought to secure the permanent interests of the country against innovation Landholders ought to have a share in the government, to support these invaluable interests, and to balance and check the other They ought to be so constituted as to protect the minority of the opulent against the majority The Senate, therefore, ought to be this body, and to answer these purposes, they ought to have permanency and stability Various have been the propositions, but my opinion is, the longer they continue in office, the better will these views be answered"

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be provided that the Senate shall choose its own president

GERRY The Vice President should not be president of the Senate. The President himself might as well be put at the head of the Legislature The close intimacy that must subsist between the President and Vice President makes it absolutely improper

MASON The office of Vice President is an encroachment on the rights of the Senate. It mixes too much the legislative and executive, which, as well as the judiciary department, ought to be kept as separate as possible

*The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States*

*The Senate shall have the sole power to try all impeachments When sitting for that purpose, they shall be on oath or affirmation When the President of the United States is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two thirds of the members present.*

PINCKNEY The Senate should not be the court of impeachment It will render the President too dependent on the Legislature If he opposes a favorite law, the two houses will combine against him, and under the influence of heat and faction, throw him out of office

WILSON The different branches should be independent of each other They are combined and blended in the Senate To try impeachments is judicial

RANDOLPH The Supreme Court should hear and determine in the first instance on all impeachments of national officers

PINCKNEY Impeachments should be tried by the Senate and Supreme Court together

HAMILTON All impeachments of officers of the United States should be tried by a court to consist of the chief or judge of the superior court of law

of each state, provided such judge shall hold his place during good behavior and have a permanent salary.<sup>7</sup>

RANDOLPH It is necessary to exclude as much as possible the Legislature from the business

MADISON The President should be tried by a tribunal of which the Supreme Court should form a part. He should not be tried by the Senate, especially as he is to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor.

*Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law*

#### SECTION 4

*The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators*

MADISON Congress should have power to alter only those regulations applying to election of representatives. The right of the state legislatures to regulate time, places, etc., in the election of senators is involved in the right to appoint them.

PINCKNEY Congress should not have power to alter the provisions at all. The states can and must be relied on in such cases.

*The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day*

<sup>7</sup> According to one text of Hamilton's plan, "an adequate salary."



MORRIS The Legislature should not be required to meet every year. The public business might not require it.

KING There can hardly be a necessity for meeting every year. A great vice in our system is that of legislating too much. The most numerous objects of legislation belong to the states. Those of the national Legislature are but few. The chief ones are commerce and revenue. When these are once settled, alterations will be rarely necessary and easily made.

MADISON\* The time of the meeting should not be fixed by the Constitution, but by law. One consideration militates strongly against fixing a time by the Constitution. It may happen that the Legislature will be called together by the public exigencies, and will finish their session but a short time before the annual period. In this case it will be extremely inconvenient to reassemble so quickly, and without the least necessity. One annual meeting ought to be required, but two should not be made unavoidable.

MORRIS If the time of meeting is fixed in the Constitution, it will not be observed, as the Legislature will not be punctual in assembling.

MORRIS May should be inserted instead of December. It might frequently happen that our measures ought to be influenced by those in Europe, which are generally planned during the winter, and of which intelligence will arrive in the spring.

MADISON May is preferable to December because the latter will require traveling to and from the seat of government in the most inconvenient seasons of the year.

#### SECTION 5

*Each house shall be the judge of the elections, returns, and qualifications of its own members, . . .*

GENERAL PINCKNEY Disputed elections of representatives should be referred to the state legislatures [which should determine in what manner representatives shall be elected in each state]. To refer disputed elections to the general Legislature will be attended with intolerable expense and trouble to the distant parts of the republic.

PINCKNEY It should be specified that each house shall be the judge of the privileges of its own members

*. . . and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide*

GORHAM Less than a majority in each house should be made a quorum. Otherwise great delay might happen in business and great inconvenience from the future increase of numbers

CARROLL More than a majority should be a quorum. Because of the great difference of interests among the states, the propriety of letting a majority be a quorum is doubtful

MERCER The fixing of a quorum should be left to the Legislature, as in Great Britain, where the requisite number is small and no inconvenience has been experienced. Requirement of a majority will put it in the power of a few, by seceding at a critical moment, to introduce convulsions and endanger the government. Examples of secession have already happened in some of the states

MORRIS A quorum should be fixed at thirty-three members in the House and fourteen in the Senate. This is a majority of the present number, and will be a bar to the Legislature, fix the number low and they will generally attend, knowing that advantage may be taken of their absence. Besides other mischiefs, if a few can break up a quorum, they may seize a moment when a particular part of the continent may be in need of immediate aid, to extort, by threatening a secession, some unjust and selfish measures

KING Instead of fixing as quorums the numbers proposed by Mr. Morris, those should be the lowest numbers, with the Legislature at liberty to increase them or not. The future increase of members will likely render a majority of the whole extremely cumbersome. As the quorum cannot

be altered, without the concurrence of the President, by less than two thirds of each house, there would be no danger in trusting the Legislature

GERRY The number for a quorum in the House of Representatives should not exceed fifty nor be less than thirty-three, with intermediate discretion left to the Legislature

*Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds expel a member*

MORRIS Concurrence of two thirds for expulsion should not be necessary This power may be safely trusted to a majority To require more may produce abuses on the side of the minority A few men, from factious motives, may keep in a member who ought to be expelled

WILSON Senators ought to be subject to impeachment and removal, if the Executive is.

*Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, .*

RUTLEDGE FOR THE COMMITTEE OF DETAIL The clause should specify publication of the proceedings of the House of Representatives, and of the Senate, when it shall be acting in a legislative capacity

GERRY It should be specified that a journal shall be kept of proceedings, except such as relate to treaties and military operations

MASON After the word "parts," the words "of the proceedings of the Senate" should be inserted, so as to require publication of all the proceedings of the House of Representatives

ANONYMOUS Provision should be made for exceptions to publication when the parts proposing to vest additional authority in the Senate come under consideration.

ELLSWORTH The clause should be struck out altogether, since it is objectionable in so many shapes The Legislature will not fail to publish their proceedings from time to time The people will call for it, if it should be improperly omitted

*and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal*

MORRIS It should be specified that any individual shall be authorized to call for the yeas and nays The small states may otherwise be under a disadvantage, and find it difficult to get a concurrence of one fifth

SHERMAN The yeas and nays should be struck out altogether They never have done any good, and have done much mischief They are not proper, as the reasons governing the voter never appear along with them

CARROLL It should be specified that any member of the Senate shall be at liberty to enter his reasons for dissent

*Neither house, during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting*

DAVIE The Senate, being executive, should sit constantly

RANDOLPH The Senate may possibly always sit—perhaps to aid the Executive

MADISON A negative on state laws <sup>8</sup> might properly be lodged in the Senate alone, which would be obliged to sit constantly

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that the prohibition against either house adjourning for more than three days, nor to any other place than that at which the two houses are sitting, without the consent of the other, shall not extend to the Senate when it shall exercise its power to decide controversies between states, regarding territory or jurisdiction <sup>9</sup>

<sup>8</sup> See proposals under Article VI    <sup>9</sup> See proposals under Article III, Section 2

**KING:** A law should be made necessary to a removal of the seat of government. Authorization for the two houses to adjourn to a new place is inconvenient. The mutability of place dishonored the Confederation, and it will require as strong a cure as we can devise

**MADISON** It should be provided that the Legislature shall, at their first assembling, determine on a place at which their future sessions shall be held, and neither house shall afterwards, during the session of the House of Representatives, without the consent of the other, adjourn for more than three days, nor shall they adjourn to any other place than such as shall have been fixed by law. A central place for the seat of government is so just and would be so much insisted on by the House of Representatives, that though a law should be made requisite for removal in the first place,<sup>10</sup> it can and will be obtained. But in order to quiet suspicions both within and without doors, it might not be amiss to authorize the two houses, by a concurrent vote, to adjourn at their first meeting to the most proper place, and to require thereafter, the sanction of a law to their removal.

#### SECTION 6

*The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States*

**BUTLER** The members of the Senate should be entitled to no salary or compensation for their services

**GENERAL PINCKNEY** As the senatorial branch is meant to represent the wealth of the country, it should be composed of persons of wealth, and if no allowance is to be made, the wealthy alone will undertake the service.

**FRANKLIN** No salary should be allowed senators. The Convention should stand far with the people. In it are a number of young men who will probably be of the Senate. If lucrative appointments shall be recommended, we might be chargeable with having carved out places for ourselves.

<sup>10</sup> Mr. Sprague was apprehensive that the existing (Continental) Congress would convene the new Congress in New York in the first instance, and that Congress would never be able to remove, especially if the President should be a Northern man.

**MORRIS** The senators should not be allowed salaries, for they will pay themselves if they can. If they cannot, they will be rich, and can do without it. Of such the second branch ought to consist. The rich will strive to establish their dominion and enslave the rest. The proper security against them is to form them into a separate interest. By thus combining, and setting apart, the aristocratic interest, the popular interest will be combined against it. There will be a mutual check and mutual security.

**HAMILTON** *If a national government can exist, members will make it a desirable object to attend, without accepting any stipend.*

**RANDOLPH** Senators and representatives should receive "liberal" compensation.

**ANONYMOUS** Representatives should receive "adequate" compensation.

**FRANKLIN** Representatives' salaries should be "moderate." Abuses tend in every case to grow of themselves when once begun. For example, there is the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the apostles, to the establishment of the papal system.

**DICKINSON** The wages of members of both houses should be required to be the same.

**RANDOLPH** Salaries of representatives and senators should be fixed by the Constitution.

**KING** It would be best to be explicit. A reserve on this point, or a reference to the national Legislature of the quantum, will excite greater opposition than any sum that would be actually necessary or proper.

**MADISON** Two extremes should be fixed, not to be exceeded by the national Legislature in payment of themselves. Wheat, or some other articles of which the average price throughout a reasonable period preceding might be settled in some convenient mode, would form a proper standard. The stipend should not be left to the Legislature to determine. Members are too much interested in the question. It is indecent that the Legislature should put their hands in the public purse to convey it into their own. It might also, in time, prove dangerous.

SHERMAN An allowance of \$5 a day should be fixed, to be paid out of the national treasury, with the states permitted to make such additions as they might judge fit. The danger is not that the Legislature will make their own wages too high, but too low, so that men ever so fit cannot serve unless they are at the same time rich.

ELLSWORTH The pay should be fixed at \$5, or the present value thereof, per day during attendance and for every thirty miles in traveling to and from Congress.

STRONG An allowance of \$4 should be fixed, leaving the states to make additions.

DICKINSON It should be provided that an act be passed every twelve years by the national Legislature, settling the quantum of wages

PATERSON Members of Congress should be compensated by their respective states.

ELLSWORTH Payment should be made by the states out of their own treasuries, the manners of different states are very different in the style of living and in the profits accruing from exercise of like talents What would be deemed, therefore, a reasonable compensation in some states, in others would be very unpopular, and might impede the system of which it made a part. If the Senate is meant to strengthen the government, it ought to have the confidence of the states The states will have an interest in keeping up a representation and will make such provision for supporting the members as will ensure their attendance

WILLIAMSON. The new states to the westward will be poor—will pay little into the common treasury—and will have a different interest from the old states The old states, therefore, ought not to pay the expenses of men who will be employed in thwarting their measures and interests

BUTLER Payment should be made by the states, particularly in the case of the senators, who will be so long out of their respective states that they will lose sight of their constituents unless dependent on them for their support

MARTIN As the Senate is to represent the states, the members of it ought to be paid by the states.

*They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same, and for any speech or debate in either house they shall not be questioned in any other place*

PINCKNEY It should be provided that each house shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the Legislature may be sitting and during the time of its session, shall threaten any of its members for anything said or done in the house—or who shall assault or arrest any witness or other person ordered to attend either of the houses, in his way going or returning, or who shall rescue any person arrested by their order

MADISON Provision should be made for ascertaining by law the privileges of each house, rather than allowing each house to decide for itself

*No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either house during his continuance in office*

RANDOLPH Members of the national Legislature should be ineligible during their terms of service and for a period thereafter, for appointment to any office established by a particular state or under the authority of the United States, except those peculiarly belonging to the first or second branches of the Legislature, respectively

ANONYMOUS It should be specified that members shall be ineligible to any office under the national government during the term for which they were elected and for three years after ceasing to be members.



**ANONYMOUS** It should be specified that members shall be ineligible to any office under the national or state governments during their terms of service and for one year thereafter

**ANONYMOUS** It should be specified that members shall be ineligible to any office under the national government during their terms of service and for one year thereafter.

**BUTLER** This precaution against intrigue is necessary. In Great Britain men get into parliament so that they may get offices for themselves or their friends. This is the source of the corruption that ruined their government.

**MASON** The door should be shut against corruption at all events. We have as example the venality and abuses in this particular in Great Britain, as well as the shameful partiality of the Legislature of Virginia to its own members, and the multiplicity of foreign embassies established by [the Continental] Congress. The disqualification is a corner stone in the fabric. It is unlikely that a sufficient number of citizens cannot be found who will be ready, without the inducement of eligibility to offices, to undertake the legislative service. Genius and virtue, it is said, ought to be encouraged. Genius might, but that virtue should be encouraged by such a species of venality, is an idea that at least has the merit of being new. If the members of the Legislature are disqualified, still the honors of the state will induce those who aspire to them to enter that service as the field in which they can best display and improve their talents and lay the train for their subsequent advancement. Extension of ineligibility of members of the Legislature to one year after the term for which they are elected is essential to guard against evasions by resignation, and stipulations for office to be fulfilled at the expiration of the legislative term.

**JENIFER** In Maryland the senators chosen for five years can hold no other office, and this circumstance has gained them the greatest confidence of the people.

**RUTLEDGE** While evasions are possible, they should be contracted as far as possible.

**SHERMAN** The mere exclusion of legislators, during their term and for a year thereafter, from offices which have been created or the emoluments thereof augmented, during their term, might be evaded by the creation

of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter

**GERRY** Admitting the eligibility of members in any case will produce intrigues of ambitious men for displacing proper officers in order to create vacancies for themselves. Although members, if disqualified themselves, may still intrigue and cabal for their sons, brothers, etc., yet as their own interest will be dearer to them than those of their nearest connections, it may be expected they will go to greater lengths to promote, it. If it should be thought that it will injure the Legislature to keep out of it men of abilities who are willing to serve in other offices, it may be required as a qualification for other offices, that the candidate shall have served a certain time in the Legislature. We have constantly endeavored to keep distinct the three great branches of government, but if we admit the eligibility of members, this must be destroyed by admitting the legislators to share in the Executive, or to be too much influenced by the Executive in looking up to him for office.

**ELLSWORTH** The mere postponement of the reward will not be any material discouragement of merit. Ambitious minds will serve two years or seven years in the Legislature for the sake of qualifying themselves for other offices. This is a sufficient security for obtaining in the Legislature the services of the ablest men, although while members they shall be ineligible to public offices. Besides, merit will be most encouraged when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

**ANONYMOUS** It should be specified that members of the House of Representatives shall be ineligible to any office under the national government during the term for which they were elected.

**MADISON** It should be specified that representatives shall be ineligible during their term of service and for one year thereafter to such offices as shall be established, or the emoluments thereof augmented, by the Legislature of the United States during the time of their being members.<sup>11</sup> This

<sup>11</sup> This is given in Yates's notes as "augmented by the Legislature of the United States during the time they were members thereof, and for one year thereafter."

is a middle ground between an eligibility in all cases and an absolute disqualification.

PINCKNEY It should be specified only that members of each house shall be incapable of holding any office under the United States for which they or any others for their benefit receive any salary, fees or emolument of any kind—and the acceptance of such office shall vacate their seats respectively. The Senate should become a school of public ministers, a nursery of statesmen. An ineligibility of members of the Legislature to office is degrading to them, impolitic and inconvenient. Therefore, the proposition should be restrained to a mere incompatibility. The first Legislature will be composed of the ablest men to be found. The states will select such to put it into operation. Should the report of the committee, or even the amendment,<sup>12</sup> be agreed to, the great offices, even those of the judiciary department, which are to continue for life, must be filled while those most capable of filling them will be under a disqualification.

HAMILTON I am against all exclusions and refinements, except only in this case that when a member takes his seat, he should vacate every other office. We have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it is necessary to support a good government. Take mankind as they are and what are they governed by? Their passions. There may be in every government a few choice spirits who may act from more worthy motives. One great error is that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest, and it will ever be the duty of a wise government to avail itself of those passions in order to make them subservient to the public good.

RANDOLPH Representatives should be incapable of re-election for a specified period after the expiration of their term of service.

ANONYMOUS They should be incapable of re-election for one year after expiration of their term of service.

<sup>12</sup> "The members of each house shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased during the time for which they shall respectively be elected. "

## SECTION 7

*All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.*

WILLIAMSON The privilege of originating money bills should be confined to the Senate, if it is not to be common to both branches. The bills in that case will be more narrowly watched than if they originate with the branch having most of the popular confidence.

WILSON If either house is indiscriminately to have the right of originating, the reverse of the proposal would be most proper, since it is a maxim that the least numerous body is the fittest for deliberation, the most numerous for decision.

RUTLEDGE It would be preferable to give the exclusive right to the Senate if it is to be given exclusively at all. The Senate, being more conversant in business, and having more leisure, will digest the bills much better, and as the bills are to have no effect till examined and approved by the House of Representatives, there can be no possible danger.

BUTLER There should be no discrimination between the two branches in respect to originating money bills. We are always following the British constitution when the reason of it does not apply. If the Senate should be degraded by any such discriminations, the best men will be apt to decline serving in it in favor of the other branch.

MADISON The Senate, as well as the first branch, will be the representatives of the people. If they should have any dangerous influence over the House of Representatives, they will more easily prevail on some member of the latter to originate the bill they wish to be passed. As the Senate will be generally a more capable set of men, it will be wrong to disable them from any preparation of the business, especially of that which is most important and, in our republics, worse prepared than any other. The restraint ought to be carried to amendment, as well as the originating of money bills, since an addition of a given sum would be equivalent to a distinct proposition of it. The word "revenue" is ambiguous. In many acts, particularly in the regulation of trade, the object will be two-fold. The raising of revenue will be one of them. How can it be determined

which is the primary or predominate one, or whether it is necessary that revenue shall be the sole object in exclusion even of other incidental effects? When the contest was first opened with Great Britain, their power to regulate trade was admitted, their power to raise revenue rejected. An accurate investigation of the subject afterward proved that no line can be drawn between the two cases.

SHERMAN We establish two branches in order to get more wisdom, which is particularly needed in the finance business—the Senate bear their share of the taxes and are also the representatives of the people. In Connecticut both branches can originate in all cases, and it has been found safe and convenient. Whatever might have been the reason of the rule as to the House of Lords, it is clear that no good arises from it now even there.

MORRIS The discrimination will disable the second branch from proposing its own money plans, and giving the people an opportunity of judging, by comparison, of the merits of those proposed by the first branch. The restriction, if it has any real operation, will deprive us of the services of the second branch in digesting and proposing money bills, of which it will be more capable than the first branch. It will take away the responsibility of the second branch, the great security for good behavior. Every law directly or indirectly takes money out of the pockets of the people. What use may be made of such a privilege in case of great emergency? Suppose an enemy at the door and money instantly and absolutely necessary for repelling him, may not the popular branch avail itself of this duress to extort concessions from the Senate, destructive of the Constitution itself? It is peculiarly proper that the Senate should have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness and so as to prevent delay of business in the other house.

WILSON If both branches are to say yes or no, it is of little consequence which should say yes or no first. The difficulties and disputes entailed by this proposition will increase with the attempts to define and obviate them. Queen Anne was obliged to dissolve her Parliament in order to terminate one of these obstinate disputes between the two houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still *sub judice* in England. The House of Representatives will insert other things in money bills and by making them

conditions of each other, destroy the deliberative liberty of the Senate. War, commerce and revenue are the great objects of the general government. All of them are connected with money. The restriction in favor of the House of Representatives will exclude the Senate from originating any important bills whatever. With regard to the purse strings, it is to be observed that the purse is to have two strings. Both houses must concur in untying, and of what importance can it be which unties first, which last? PINCKNEY If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills. CARROLL The most ingenious men in Maryland are puzzled to define the case of money bills or explain the constitution on that point, though it seems to be worded with all possible plainness and precision. It is a source of continual difficulty and squabble between the two houses.

GERRY FOR THE COMMITTEE OF JULY 2 It should be provided that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government, shall originate in the House of Representatives and shall not be altered or amended by the Senate.

RANDOLPH It should be specified that bills for raising money for the purpose of revenue or for appropriating the same, shall originate in the House of Representatives and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the objects of its appropriation.

STRONG It should be specified that bills for raising money for the purpose of revenue, or for appropriating the same and for fixing the salaries of the officers of the government, shall originate in the House of Representatives, but the Senate may propose or concur with amendments as in other cases.

FRANKLIN It could be provided that there shall be no negative in the Senate on money bills, or if that would not do, by declaring there shall be no such branch at all. This will get over the danger or difficulty that might arise from a negative in the second branch, where the people will not be proportionally represented.

*Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States, if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it*

RANDOLPH. The Executive and a convenient number of the judiciary should compose a council of revision with authority to examine every act of the national Legislature before it shall operate, and every act of a particular [state] legislature before a negative thereon shall be final,<sup>13</sup> and dissent of the said council should amount to a rejection unless the act of the national Legislature should be again passed or that of the particular legislature be again negatived by a certain proportion of the members of each branch

WILSON The Executive and a convenient number of the judiciary should have revisionary power unless overruled by two thirds of each branch The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves It has been said that the judges, as expositors of the laws, will have an opportunity of defending their constitutional rights There is weight in this observation, but this power of the judges does not go far enough Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet may not be so unconstitutional as to justify the judges in refusing to give them effect Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the Legislature

MADISON The only way to make a government answer all the ends of its institution is to collect the wisdom of its several parts in aid of each other whenever it is necessary Hence the propriety of incorporating the judicial with the Executive in the revision of the laws Joining the judges with the supreme executive magistrate will by no means interfere with that independence so much to be approved and distinguished in the several departments The judiciary will protect their department, and, united

<sup>13</sup> See proposals under Article VI

with the Executive, make its negatives more strong. The independence of the Executive, having the eyes of all upon him, will make him an impartial judge—add the judiciary and you greatly increase his respectability. The great difficulty in rendering the Executive competent to its own defence arises from the nature of republican government, which cannot give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest against betraying the national interest, which appertain to an hereditary magistrate. In a republic, personal merit alone can be the ground of political exaltation, but it will rarely happen that this merit will be so pre-eminent as to produce universal acquiescence. The executive magistrate will be envied and assailed by disappointed competitors. His firmness, therefore, will need support. He will not possess those great emoluments from his station, nor that permanent stake in the public interest which will place him out of the reach of foreign corruption. He will stand in need, therefore, of being controlled as well as supported. Two objections have been made, first, that the judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them, second, that the judiciary department ought to be separate and distinct from the other great departments. The first objection has some weight, but it is much diminished by reflecting that a small proportion of the laws coming in question before a judge will be such wherein he had been consulted, that a small part of this proportion would be so ambiguous as to leave room for his prepossessions, and that but a few cases would probably arise in the life of a judge under such ambiguous passages. As to the second objection, the maxim on which it is founded requires a separation of the Executive as well as of the judiciary from the Legislature and from each other. In England, whence the maxim itself has been drawn, the Executive has an absolute negative on the laws, and the supreme tribunal of justice [the House of Lords] forms one of the other branches of the Legislature. In short, whether the object of the revisionary power is to restrain the Legislature from encroaching on the other co-ordinate departments, or on the rights of the people at large, or from passing laws unwise in their principle, or incorrect in their form, the utility of annexing the wisdom and weight of the judiciary to the Executive seems incontestable. This device would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity



and technical propriety in the laws, qualities peculiarly necessary, and yet shamefully wanting, in our republican codes. Instead of contenting ourselves with laying down the theory in the Constitution that each department ought to be separate and distinct, it is proposed to add a defensive power to each, which shall maintain the theory in practice.

ELLSWORTH The judges will possess a systematic and accurate knowledge of the laws, which the Executive cannot be expected always to possess. The law of nations also will come frequently into question. Of this the judges alone will have competent information.

MASON This restraining power would have the effect not only of hindering the final passage of unjust and pernicious laws, but would discourage demagogues from attempting to get them passed.

MADISON It should be specified that all acts before they become laws shall be submitted both to the Executive and supreme judiciary departments, and if either of these should object, two thirds of each house, if both should object, three fourths of each house, should be necessary to over-rule the objections and give to the acts the force of law.

MERCER I disapprove of the doctrine that the judges as expositors of the Constitution should have authority to declare a law void. Laws ought to be well and cautiously made, and then to be uncontrollable.

WILSON The Executive and judiciary should have jointly an absolute negative.

PINCKNEY A council of revision should consist of the President, secretary for foreign affairs, secretary of war, heads of the departments of treasury and admiralty, or any two of them together with the President.

WILSON The Executive ought to have an absolute negative. Without such a self-defense the Legislature can at any moment sink it into non-existence. The Legislature would know that such a power existed and would refrain from such laws as it would be sure to defeat. The requiring a large proportion of each house to overrule the Executive check might do in peaceable times, but there might be tempestuous moments in which animosities may run high between the Executive and legislative branches, and in which the former should be able to defend itself.

READ An absolute negative is essential to the Constitution, to the preservation of liberty and to the public welfare

MORRIS The most virtuous citizens will often, as members of a legislative body, concur in measures which afterwards in their private capacity they will be ashamed of If the Executive be overturned by the popular branch, the tyranny of one man will ensue

BUTLER Instead of a negative, it should be specified that the national Executive have a power to suspend any legislative act for a certain term.

WILLIAMSON In place of the revisionary provision, two thirds should be required for every effective act of the Legislature

GERRY A person or persons of proper skill should be appointed, as has been done in Pennsylvania, to draw bills for the Legislature This is a better expedient for correcting the laws than a revisionary council

BEDFORD The Legislature should be under no check The representatives of the people are the best judges of what is for the peoples' interest Two branches will produce a sufficient control within the Legislature It is sufficient to mark out in the Constitution the boundaries to the legislative authority, which will give all the requisite security to the rights of the other departments

*If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law*

WILLIAMSON It should be specified that three quarters of each house shall be requisite to over-rule the dissent of the President

MORRIS It is to the interest of the distant states to prefer three quarters, as they will be oftenest absent and need the interposing check of the President. The excess, rather than the deficiency of laws, is to be dreaded. The danger to the public interest from the instability of laws is most to be guarded against If one man in office will not consent where he ought,

every fourth year another can be substituted This term is not too long for fair experiments. Many good laws are not tried long enough to prove their merit

HAMILTON Two thirds in New York has been ineffectual either where a popular object or a legislative faction operated

MADISON The object of the power is twofold first, to defend the Executive rights, and second, to prevent popular and factious injustice It is an important principle in this and in the other state constitutions to check legislative injustice and encroachments The experience of the states has demonstrated that their checks are insufficient. We must compare the danger from the weakness of two thirds with the danger from the strength of three quarters On the whole, the former is probably greater As to the difficulty of repeals, it is probable that in doubtful cases the policy will soon take the place of limiting the duration of laws so as to require renewal instead of repeal

MORRIS. Three quarters of each house should be required to *repeal* laws where the President does not concur This would prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public and which are among our greatest calamities

*But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law*

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that seven days will be allowed to the President for returning bills with his objections

*Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary*

*(except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill*

SHERMAN This should be omitted. It is unnecessary, except as to votes taking money out of the treasury, which might be provided for in another place.

[No clauses covering the following subject matter pertaining to enactment of laws are included in the Constitution.]

PINCKNEY It should be specified that the Legislature of the United States shall have the power of making the great seal, which shall be kept by the President of the United States, or in his absence by the President of the Senate, to be used by them as the occasion may require—it shall be called the great seal of the United States and shall be affixed to all laws.

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that the enacting style of the laws of the United States shall be "Be it enacted by the Senate and Representatives in Congress assembled."

PATERSON It should be provided that none of the powers vested in the United States in Congress shall be exercised without the consent of a certain proportion of states.

RANDOLPH More than a bare majority of votes [of members present] should be required in the Legislature to pass laws in certain cases, particularly in commercial cases.

WILLIAMSON Approval of two thirds [of the members present] should be required for every effective act of the Legislature. [No veto.]

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that each house shall, in all cases, have a negative on the other.

## SECTION 8

*The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States, . .*

PINCKNEY The Legislature should be restrained from establishing a perpetual revenue

MASON It should be provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for longer than a term to be specified in the Constitution. Great Britain's caution on this point is the Palladium of the public liberty

GERRY The Legislature should not be able to raise money [and armies] without limit. This renders the rights of the citizens insecure

PATERSON It should be specified that Congress shall have power [in addition to a power to make requisitions according to the rule of apportionment] to pass acts for raising a revenue by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the United States, by stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post office, to be applied to such federal purposes as they shall deem proper and expedient

WILLIAMSON Money should be raised only by imposts and duties and not by direct taxation, which cannot be equitably exercised by a general government For can a man over the mountains, where produce is a drug, pay equal with one near shore? It would be tyranny, too, if the smaller states could thus tax the greater, in order to ease themselves

MARTIN It should be specified that whenever the Legislature finds it necessary to raise revenue by "direct" taxation, requisitions [according to the rule of apportionment] should be made on the several states, since direct taxation should not be used except in case of absolute necessity,

and then the states would be best judges of the mode. It should also be specified that acts directing the mode of, and authorizing, the collection of the requisitions, should be passed only in event of default.

PATERSON Power to pass acts making requisitions and acts directing collection of taxes in noncomplying states should be qualified by requiring the consent of a specified number or proportion of states.

ANONYMOUS The Legislature should be restricted from obliging duties to be collected in a manner injurious to any state.

MASON The prohibition of taxes on exports should be specifically connected with this clause.

ANONYMOUS The provision for the object of the taxes is unnecessary and should be omitted.

*. . . but all duties, imposts and excises shall be uniform throughout the United States, .*

McHENRY All "prohibitions or restraints," as well as all "duties, imposts and excises" laid or made by the Legislature should be uniform and equal throughout the United States.

SHERMAN FOR THE COMMITTEE OF AUGUST 25 "Tonnage" <sup>14</sup> should be included with "duties, imposts and excises."

*. . . To borrow money on the credit of the United States, .*

RUTLEDGE FOR THE COMMITTEE OF DETAIL Included in this clause should be the power to emit bills on the credit of the United States.

MASON Congress would probably not have the power unless it were expressed, and it might be unwise to tie their hands in unforeseen emergencies by omission of the provision.

MERCER It will stamp suspicion on the government to deny it a discretion

<sup>14</sup> Duties of tonnage

on this point It is impolitic also to excite the opposition of all those who are friends to paper money The people of property will be sure to be on the side of the plan, and it is impolitic to purchase their further attachment with the loss of the opposite class of citizens

MADISON The provision for emitting bills might be included together with a prohibition against making them a tender.

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*To regulate commerce with foreign nations, and among the several states, and with the Indian tribes, .*

GERRY This clause should be changed. Under it monopolies may be established

PINCKNEY It should be specified that each state may lay embargoes in time of scarcity

SHERMAN States ought to have the power to lay embargoes in order to prevent suffering and injury to the poor.

RUTLEDGE FOR THE COMMITTEE OF AUGUST 18 Congress should have power to regulate commerce with Indians "within the limits of any state, not subject to the laws thereof "

PINCKNEY It should be provided that no act of the Legislature for the purpose of regulating the commerce of the United States with foreign powers or among the several states should be passed without the assent of two thirds of *all* the members of each house There are five distinct commercial interests <sup>15</sup> and these different interests would be a source of oppressive regulations if no check to a bare majority should be provided

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that no navigation act should be passed without the assent of two thirds of the members *present* in each house.

<sup>15</sup> "1 The fisheries & W India trade, which belonged to the N England States 2 the interest of N York lay in a free trade 3 Wheat & flour the Staples of the two Middle States (N J & Penna ) 4 Tobacco the staple of Maryland & Virginia & partly of N Carolina 5 Rice & Indigo, the staples of S Carolina & Georgia "

PINCKNEY It should be provided that consent of three fourths of the *whole* Legislature should be necessary to the enacting of a law respecting regulation of trade or the formation of a navigation act

MASON It should be provided that no law in the nature of a navigation act be passed before the year 1808 without the consent of two thirds of each branch of the Legislature The power to pass navigation acts by a bare majority would not only enhance the freight, but would enable a few rich merchants in Philadelphia, New York and Boston to monopolize the staples of the southern states and reduce their value perhaps fifty percent

*. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States, .*

SHERMAN The power to make laws on the subject of bankruptcy should be limited Bankruptcies were in some cases punishable with death by the laws of England

PINCKNEY Power should also be given to establish uniform laws respecting the damages arising on the protest of foreign bills of exchange.

*To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures, .*

*. . . To provide for the punishment of counterfeiting the securities and current coin of the United States, . . .*

MORRIS The authority should be extended further, to provide for the punishment of counterfeiting in general Bills of exchange, for example, might be forged in one state and carried into another.

ANONYMOUS It might also be politic to provide by national authority for punishment of counterfeiting foreign paper



*. . . To establish post offices and post roads, . . .*

PINCKNEY Power should also be granted to regulate stages on the post roads

FRANKLIN It should be added that the Legislature has power to provide for cutting canals where deemed necessary.

*. . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, . . .*

MADISON It should be provided that the government have power to encourage by premiums and provisions the advancement of useful knowledge and discoveries

PINCKNEY Power should be given the government to establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures

PINCKNEY The government should have power to establish seminaries for the promotion of literature and the arts and sciences

MADISON Congress should be enabled to establish a university in the place of the general government, and should possess exclusive jurisdiction over the institution. It should be specified that all persons might be admitted to the university and to its honors and emoluments, without any distinction of religion whatever.

*. . . To constitute tribunals inferior to the Supreme Court; . . .*

RANDOLPH Inferior tribunals should be established by the Constitution [with judges to be chosen by Congress]

HAMILTON It should be provided that the Legislature appoint courts in each state, so as to make the state governments unnecessary to it.

PINCKNEY It should be specified that Congress have the exclusive right of instituting in each state a court of admiralty

RUTLEDGE Provision should be made for no national tribunals except a single supreme one The state tribunals are most proper to decide in all cases in the first instance Establishment of inferior national tribunals will make unnecessary encroachments on the jurisdiction of the states and create unnecessary obstacles to their adoption of the new system,

MARTIN A national judiciary extended into the states will be ineffectual and will be viewed with a jealousy inconsistent with its usefulness It will interfere with the jurisdiction of the state tribunals

PATERSON Powers given Congress should be qualified by the provision that all punishments, fines, forfeitures and penalties incurred for contravening acts, rules and regulations of Congress be adjudged by the common law judiciaries of the state in which the offense is committed, with liberty of commencing action in the superior common law judiciary in the state, subject to correction of all errors, both in law and fact, in rendering judgment, to an appeal to the judiciary of the United States [consisting of one supreme tribunal]

PINCKNEY. It should be specified that Congress shall have power to institute a federal judicial court to which an appeal shall be allowed from the judicial courts of the several states in all causes wherein certain specified questions shall arise

SHERMAN Congress, in establishing inferior tribunals, should make use of the state tribunals whenever possible with safety to the general interest.

. . . *To define and punish piracies and felonies committed on the high seas, and offences against the law of nations,* . . .

MADISON The words "and punish[ment]" should be stricken out.

MASON It might not be proper to take power in all these cases wholly from the states

WILSON "Declare" should be used instead of "define" Felonies are sufficiently defined by common law.

MORRIS "Designate" is preferable to "define" and should be used, since the word "define" may be limited to pre-existing meanings.

WILSON. "Punish" should be inserted before the phrase "offences against the law of nations" To pretend to define the law of nations, which depends on the authority of all the civilized nations of the world, would have a look of arrogance that would make us ridiculous

. *To declare war, grant letters of marque and reprisal,  
and make rules concerning captures on land and water, . . .*

HAMILTON The Senate should have the sole power of declaring war  
PINCKNEY The Senate would be the best depository of this power, being more acquainted with foreign affairs than the House of Representatives, and most capable of proper resolutions, and not too numerous for such deliberations Although no advantage would be given the larger states, the power notwithstanding would be safe, since the small, as well as the large states, will have their all at stake in such cases It would be singular for one authority to make war and another peace.

RANDOLPH The power to declare war should be placed in the House of Representatives

BUTLER The power to make war should be vested in the President, who will have all the requisite qualities and will not make war but when the nation will support it

HAMILTON The President should have the power to make war, with the advice of the Senate

SHERMAN "Make war" should be used rather than "declare war" The latter narrows the power too much.

BUTLER. The power of peace should be included, if the legislature is to have the power of war.

PINCKNEY The whole clause, "To declare war," should be stricken out

*. . . To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; . . .*

GERRY: It should be stipulated that there shall not be kept up in time of peace more than two or three thousand troops. The clause as it stands implies that there is to be a standing army, which is unnecessary even for so great an extent of country as this, and dangerous to liberty. Even if necessary, some restriction on the number should be provided.

PINCKNEY: It should be stipulated that the military shall always be subordinate to the civil power, and that no grants of money shall be made by the Legislature for supporting military land forces, for more than one year at a time.

GERRY: Appropriation of money for a term of two years instead of one seems unreasonable.

*. . . To provide and maintain a navy, . . .*

*To make rules for the government and regulation of the land and naval forces,*

MARTIN: This power should be qualified by the provision that in time of peace the army shall not consist of more than a specified number of troops.

GERRY: If there is no restriction, a few states may establish a military government.

*To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions,*

REMARKS FOR THE COMMITTEE OF DETAIL: "To enforce treaties" should be added.

*To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be*

*employed in the service of the United States, reserving to the state respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress, . . .*

HAMILTON It should be specified that no state shall have any forces, land or naval, and the militia of all the states shall be under sole and exclusive direction of the United States, which shall also appoint and commission officers of the militia.

DICKINSON The general power over the militia should be restrained to one fourth part at a time, which by rotation would discipline the whole militia.

MASON Power should be granted the general government to make laws for regulating and disciplining the militia, not exceeding one tenth part in any one year, reserving the appointment of officers to the states A select militia is as much as the general government can advantageously be charged with. By granting greater authority, insuperable objections will be created

MASON Such part of the militia as might be required by the states for their own use should be excepted from the general government's power to make laws for organizing and disciplining

SHERMAN The states might want their militia for defense against invasions and insurrections and for enforcing obedience to their laws They will not give up this point

ELLSWORTH It should be provided that the militia have the same arms and exercises and be under the rules established by the general government only when in actual service of the United States, and when the states neglect to provide regulations for the militia, it should be regulated and established by the United States The general authority cannot sufficiently pervade the Union for the purpose of taking the whole authority, nor can it accommodate itself to the local genius of the people The states will never submit to the same militia laws Three or four shillings as a penalty will enforce obedience better in New England, than forty lashes in some other places.

GERRY Less power over the militia should be vested in the general government. The states will be only drill-sergeants. The citizens of Massachusetts might as well be disarmed as to have command taken from the states and to be subjected to the general Legislature. It will be regarded as a system of despotism.

SHERMAN The phrase reserving to the states the authority of training the militia should be stricken out. It is unnecessary. The states will, of course, have this authority if not given up.

MADISON The appointment of only those officers under the rank of general officers should be reserved to the states.

READ Appointment of officers by the state executives should be insisted on. The propriety of leaving appointment to the states is doubtful. In some states officers are elected by the legislatures, in others by the people themselves.

MASON The whole clause should be prefaced by the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace."

MADISON This phrase will not restrain Congress from establishing a military force in time of peace if found necessary, and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the government on that head.

*To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings,—and . . .*

BUTLER The place for the seat of the national government should be fixed by the Constitution.

*. . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof*

GERRY<sup>8</sup> The Legislature should not have the general power to make what laws they may please to call necessary and proper This renders the rights of the citizens insecure.

[No clauses covering the following subject matter pertaining to powers of Congress are included in the Constitution ]

MASON Congress should have power to enact sumptuary laws<sup>16</sup> No government can be maintained unless the manners be made consonant to it A proper regulation of excises and of trade may do a great deal, but it is best to have an express provision The love of distinction, it is true, is natural, but the object of sumptuary laws is not to extinguish this principle but to give it a proper direction This power is made necessary by the extravagance of our manners, the excessive consumption of foreign superfluities and the necessity of restricting it, as well with economical as republican views

MADISON Power should be vested in Congress to grant charters of incorporation in cases where the public good may require them and the authority of a single state may be incompetent The primary object of this is to secure an easy communication between the states, which the free intercourse now to be opened, seems to call for. The political obstacles being removed, a removal of the natural ones, as far as possible, ought to follow

WILSON The power is necessary to prevent a state from obstructing the general welfare. It is important to facilitate by canals the communication with the western settlements

MASON The power should be limited to the single case of canals

<sup>16</sup> Laws restricting individual expenditures for food, clothing, etc

**RUTLEDGE** FOR THE COMMITTEE OF DETAIL It should be provided that Congress shall have power to provide as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual states, in matters which respect only their internal police, or for which their individual authority may be competent

**RANDOLPH** Congress should have power to legislate in all cases to which the separate states are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation

**BEDFORD** The power to legislate in all cases for the general interests of the Union should be added to this

**HAMILTON** The national legislature should have indefinite authority and unlimited power of passing all laws without exception [subject to veto by Executive] No boundary can be drawn between the national and state legislatures If the authority of the national legislature is limited, the rivalry of the states will gradually subvert it Even as corporations, the extent of some of them would be formidable As states, they ought to be abolished, although it is necessary to leave in them subordinate jurisdiction

**MADISON** The greatest danger is from the encroachment of the states on the national government And if it were the case that the national government usurped the state government, if such usurpation were for the good of the whole, no mischief could arise To draw the line between the national and state governments is a difficult task Though it should be done if practicable, it seems impossible

## SECTION 9

*The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*



**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that the migration or importation of such persons as the several states shall think proper to admit shall not be prohibited

**ELLSWORTH** The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. As slaves multiply so fast in Virginia and Maryland that it is cheaper to raise them than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we prevent importation as is urged, we shall be unjust toward South Carolina and Georgia. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our country.

**SHERMAN** As the public good does not require the right to import slaves to be taken from the states, and as it is expedient to have as few objections as possible to the proposed scheme of government, it is best to leave the matter as we find it. The abolition of slavery seems to be going on in the United States and the good sense of the several states will probably by degrees complete it.

**PINCKNEY** If the southern states are let alone, they will probably of themselves stop importations.

**BALDWIN** Georgia, if left to herself, will probably put a stop to the evil. As one ground for this conjecture there is the existence of a particular sect composed of a respectable class of people, who carry their ethics beyond the mere equality of men, extending their humanity to the claims of the whole animal creation.

**GENERAL PINCKNEY** The importation of slaves will be for the interest of the whole union. The more slaves, the more produce to employ the carrying trade, the more consumption also, and the more of this, the more of revenue for the common treasury. Candidly, South Carolina will probably not stop her importations of slaves in any short time, but only occasionally as she does now.

**WILLIAMSON** The law of North Carolina does not directly prohibit the importation of slaves. It imposes a duty of £5 on each slave imported from Africa, £10 on each from elsewhere, and £50 on each from a state licensing manumission. It is wrong to force anything down not absolutely necessary, and which any state must disagree to.

**LIVINGSTON FOR THE COMMITTEE OF ELEVEN** It should be specified that migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800

**MADISON** Twenty years [to 1808] will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable than to say nothing about it in the Constitution

**MASON** The general government should have power to prevent the increase of slavery. It is essential in every point of view. As to the states being now in possession of the right to import, this is the case with many other rights, now to be properly given up. The western people are already calling out for slaves for their new lands, and will fill that country with slaves if they can be got through South Carolina and Georgia

**MORRIS** The clause should read, "importation of slaves into North Carolina, South Carolina, and Georgia." This would be most fair and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the states might be defeated. It should be known, also, that this part of the Constitution is a compliance with those states.

**DICKINSON** The clause should be amended to read, "The importation of slaves into such states as shall permit the same," etc., which would confine the clause to the states which have not themselves prohibited the importation of slaves

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that no tax or duty shall be laid on the migration or importation of such persons as the several states shall think proper to admit

**SHERMAN** To put a tax on slaves imported will make the matter worse, because it will imply they are property

**MORRIS** The clause implies that the Legislature may tax freemen imported.

**GENERAL PINCKNEY** Slaves imported should be liable to an equal tax with other imports

LIVINGSTON FOR THE COMMITTEE OF ELEVEN It should be specified that a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports

BALDWIN "A rate not exceeding the common impost of articles not enumerated" should be inserted in place of "a rate not exceeding the average of duties laid on imports "

*The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.*

PINCKNEY It should be specified that the privilege and benefit of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner, and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months

RUTLEDGE Habeas corpus should be declared inviolate A suspension could never be necessary at the same time through all the states

WILSON It is doubtful whether in any case a suspension could be necessary, as the discretion now exists with judges, in most important cases, to keep in jail or admit to bail

*No bill of attainder or ex post facto law shall be passed.*

MASON The provision against ex post facto laws should be stricken out It is not sufficiently clear that the prohibition meant by this phrase is limited to cases of a criminal nature, and no legislature ever did or can altogether avoid them in civil cases

MORRIS The ex post facto provision is an unnecessary guard, as the principles of justice, law, etc , are a perpetual bar to such laws To say that the Legislature shall not pass an ex post facto law is the same as to declare they shall not do a thing contrary to common sense, that they shall not cause that to be crime which is no crime.

ELLSWORTH There is no lawyer, no civilian, who will not say that ex post facto laws are void of themselves It cannot then be necessary to prohibit them.

WILSON To prohibit ex post facto laws will bring reflections on the Constitution and proclaim that we are ignorant of the first principles of legislation, or are constituting a government that will be so. If similar prohibitions in the state constitutions have had no effect, it will be useless to insert them in the Constitution. Besides, both sides will agree to the principle and differ as to its application.

JOHNSON The clause is unnecessary and implies an improper suspicion of the national Legislature.

GERRY The prohibition ought to be extended to civil cases.

*No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herem before directed to be taken*

GERRY It should be specified that from the first meeting of the Legislature of the United States, till a census shall be taken, all monies to be raised for supplying the public treasury by direct taxation shall be assessed on the inhabitants of the several states according to the number of their representatives respectively in the first branch.

ELLSWORTH To Mr. Gerry's provision should be added the words "subject to a final liquidation by the rule of apportionment when a census shall have been taken."

ELLSWORTH It should be provided that the rule of contribution by direct taxation shall be the number of white inhabitants and three fifths of every other description in the several states, until some other rule that shall more accurately ascertain the wealth of the several states can be devised and adopted by the Legislature.

FRANKLIN The weakest state should say what proportion of money or force it is able and willing to furnish, and all others should furnish an equal proportion, and if these supplies should on occasions not be sufficient, let Congress make requisitions on the richer and more powerful states for further aids, to be voluntarily afforded, leaving to each state the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

*No tax or duty shall be laid on articles exported from any state*

KING Congress should have power to tax exports. If slaves are to be imported, shall not the exports produced by their labor supply a revenue, the better to enable the general government to defend their masters? Either slaves should not be represented or exports should be taxed.

MORRIS, The provision to prohibit taxing of exports is inadmissible. It is so radically objectionable that it might cost the whole system the support of some members. It would not, in some cases, be equitable to tax imports without taxing exports, and taxes on exports would often be the most easy and proper of the two. Virginia has found her account in taxing tobacco. All countries having peculiar articles tax the exportation of them, as France her wines and brandies. A tax here on lumber would fall on the West Indies and punish their restrictions on our trade. The same is true of live stock and in some degree of flour. In case of a dearth in the West Indies we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. If no tax can be laid on exports, an embargo cannot be laid, though in time of war such a measure may be of critical importance. The state of the country also will change, and render duties on exports, as skins, beaver and other peculiar raw materials, politic in the view of encouraging American manufactures.

MADISON The power of taxing exports is proper in itself and as the states cannot with propriety exercise it separately, it ought to be vested in them collectively. The contract between the French Farmers General and Mr Morris, stipulating that if taxes should be laid in America on the export of tobacco, they should be paid by the Farmers, shows that it is understood by them that the price would be thereby raised in America, and consequently the taxes be paid by the European consumer. The southern states being most in danger, and most needing naval protection, could the less complain if the burden should be somewhat heaviest on them. Time will equalize the situations of the states in this matter. It is sufficient argument that a tax, though it may not be expedient at present, may be so hereafter. A proper regulation of exports may, and probably will be, necessary hereafter, for revenue, domestic manufactures, and procuring equitable regulations from other nations.

WILSON The power is attacked by reasoning which can only hold good in case the general government is compelled, instead of authorized, to lay duties on exports To deny this power is to take from the common government half the regulation of trade A power over exports might be more effectual than that over imports, in obtaining beneficial treaties of commerce

HAMILTON Notwithstanding the common opinion, exports are fit objects for moderate taxation

FRTZSIMONS A tax on exports should not be laid immediately, but a power should be given of laying the tax when a proper time may call for it This will certainly be the case when America shall become a manufacturing country

LANGDON The concurrence of two thirds or three fourths of the Legislature should be required to pass an act taxing exports Oppression of the trade of the southern states by the northern states will thus be guarded against

MADISON It should be specified that two thirds of each house be required to tax exports This is a lesser evil than a total prohibition

DICKINSON Power should be given to tax exports with the exception of particular articles This would be better than prohibiting the power with respect to all articles and forever

CLYMER Power should be given to tax exports with the qualification that it be restrained to regulations of trade, by making the clause read, "No tax or duty for the purpose of revenue shall be laid on articles exported from any state"

*No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.*

GORHAM These precautions should be omitted They are unnecessary. The government will be so fettered by the restriction against obliging vessels bound to or from one state to enter, clear, or pay duties in another,

as to defeat the good purposes of the plan. For example there is the case of Sandy Hook, which is in the state of New Jersey, but where precautions against smuggling into New York ought to be established. Revenue might be defeated, if vessels can run up long rivers, through the jurisdiction of different states, without being required to enter, with the opportunity of landing and selling their cargoes by the way. It might be very proper to oblige vessels to stop at Norfolk on account of the better collection of the revenue.

MADISON The restriction would be inconvenient as in the River Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvania.

McHENRY Congress should be restrained from giving preference to the shipping of one state above another, as well as to the ports

McHENRY It should be specified that in the event it shall be judged expedient by the Legislature of the United States that one or more ports for collecting duties or imports, other than those ports of entrance and clearance already established by the respective states, should be established, the Legislature of the United States shall signify the same to the executives of the respective states, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the states at their next session, and the Legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any state, except the legislature of such state shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the United States to the executive of such state

*No money shall be drawn from the treasury, but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.*

MASON It should be required that an account of the public expenditures be published annually.

FITZSIMONS A full report should not be required. It is absolutely impossible to publish expenditures in the full extent of the term.

KING The term "expenditures" goes to every minute shilling. This will be impracticable. Congress might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

PINCKNEY It should be provided that funds which shall be appropriated for payment of public creditors, shall not during the time of such appropriation, be diverted or applied to any other purpose.

*No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state*

[No clauses covering the following subject matter pertaining to limitations on the Federal Government are included in the Constitution.]

GENERAL PINCKNEY Some security should be given the southern states against emancipation of slaves.

GERRY It should be specified that Congress be prohibited from passing any law impairing the obligation of contracts.

MADISON Creditors should be secured under the new Constitution from a violation of the public faith when pledged by the Legislature.

[No clauses covering the following subject matter pertaining to limitations on the Federal Government are included in the body of the Constitution. These suggestions are, however, embodied in amendments to the Constitution.]



PINCKNEY It should be specified that the liberty of the press shall be inviolably preserved.

PINCKNEY It should be specified that no soldier shall be quartered in any house in time of peace without consent of the owner

MASON The Constitution should be prefaced by a bill of rights It will give great quiet to the people.

#### SECTION IO

*No state shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts,*

RUTLEDGE FOR THE COMMITTEE OF DETAIL States should be allowed to emit bills of credit and make anything other than gold and silver coin a tender *with* consent of Congress The prohibition should not be absolute.

GORHAM An absolute prohibition of paper money will rouse the most desperate opposition from its partisans

*. . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility*

MORRIS No restriction from interfering in private contracts should be placed on the states That would be going too far There are a thousand laws, relating to bringing actions—limitations of actions, etc,—which affect contracts The judicial power of the United States will be a protection in cases within their jurisdiction, and within the state itself a majority must rule, whatever may be the mischief done among themselves

MASON Cases will happen that cannot be foreseen, where some kind of interference will be proper and essential For example, there is the case of limiting the period for bringing actions on open account—that of bonds

after a certain lapse of time Is it proper to tie the hands of the states from making provision in such cases?

MADISON A negative [by Congress] on the state laws can alone secure the effect Evasions might and will be devised by the ingenuity of the legislatures Are not retrospective interferences already prohibited by the prohibition of *ex post facto* laws, which will oblige the judges to declare such interferences null and void?

RUTLEDGE Instead of a prohibition on laws interfering with contracts, a restriction on bills of attainder and retrospective laws should be inserted.

JOHNSON FOR THE COMMITTEE OF STYLE It should be specified that no state shall pass any laws altering or impairing the obligation of contracts

GERRY It should be specified that Congress be laid under a like prohibition respecting contracts

[No clause specifically covering the following subject matter is included in the Constitution ]

MADISON It should also be specified that no state shall lay embargoes Such acts by the states would be unnecessary, impolitic and unjust

*No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, . . .*

MADISON The prohibition against the states laying imposts or duties on imports should be absolute, instead of being qualified by the consent of Congress As the states interested in this power, by which they can tax the imports of their neighbors passing through their markets, are a majority, they can give the consent of Congress, to the injury of New Jersey, North Carolina, etc

LANGDON States should be prohibited from taxing the produce of *other* states exported from their harbors

*. except what may be absolutely necessary for executing its inspection laws, . . .*

MASON It should be provided that nothing herein contained shall be construed to restrain any state from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses, in keeping the commodities in the care of public officers, before exportation These expenses cannot very well be provided for by a tax in some other way, as it is inconvenient to require the planters to pay a tax before the actual delivery for exportation

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GORHAM AND LANGDON The provision should be omitted If agreed to, there will be no security for the states exporting through other states, against oppressions of the latter How will redress be obtained in case duties shall be laid beyond the purpose expressed?

*. . . and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, . . .*

CLYMER This regulation should be omitted Encouragement of the western country <sup>17</sup> is suicide on the part of the old states If the states have such different interests that they cannot be left to regulate their own manufactures, without encountering the interests of other states, it is a proof that they are not fit to compose one nation

KING The regulation may too much interfere with a policy of states respecting their manufactures, which may be necessary, while revenue is the object of the general Legislature

*. . . and all such laws shall be subject to the revision and control of the Congress*

DICKINSON It should be specified that all such laws require the assent of Congress

MASON It should be specified that such laws are subject to the revision and control of Congress in case of abuse

<sup>17</sup> This is in reply to the following argument by Morris for the clause "The regulation is necessary to prevent the Atlantic states from endeavoring to tax the western states and to promote their own interests by opposing the navigation of the Mississippi, which would drive the western people into the arms of Great Britain"

ANONYMOUS This clause should be struck out.

*No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay*

McHENRY It should be specified that no state shall be restrained from laying duties of tonnage for the purpose of clearing harbors and erecting lighthouses, but acts laying such duties shall be subject to the approbation or repeal of Congress

MASON The situation of the Chesapeake peculiarly requires expenses of this sort.

## ARTICLE II

### SECTION I

*The executive power shall be vested in a President of the United States of America.*

SHERMAN The number of executives should not be fixed, the Legislature should be at liberty to appoint one or more as experience might dictate. The executive magistrate is nothing more than an institution for carrying the will of the Legislature into effect, and the person or persons ought to be appointed by and accountable to the Legislature only, which is the depository of the supreme will of the society. The Legislature are the best judges of the business which ought to be done by the executive department and consequently of the number necessary from time to time for doing it.

PATERSON The executive should consist of several persons.

RANDOLPH It is doubtful whether even a council will be sufficient to check the improper views of an ambitious man. A unity of the executive would savor too much of monarchy.

RANDOLPH The executive should consist of three members, to be drawn from different parts of the country. A unity in the executive magistrate is the foetus of monarchy. The great requisites for the executive department, vigor, dispatch and responsibility, can be found in three men as well as one man. The executive ought to be independent. It ought, therefore, in order to support its independence, to consist of more than one. The permanent temper of the people is adverse to the very semblance of monarchy. The necessary confidence will never be reposed in a single magistrate. The appointment of a single magistrate will generally be in favor of some inhabitant near the center of the community, and consequently the remote parts will not be on an equal footing. Local views will be attributed to him, frequently well founded, often without reason. This will excite disaffection.

**WILLIAMSON** As the executive is to have a kind of veto on the laws, and as there is an essential difference of interests between the northern and southern states, particularly in the carrying trade, the power will be dangerous to the part of the Union from which the Executive is not taken. Another objection against a single magistrate is that he will be an elective king and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children.

**GERRY** A council should be annexed to the Executive in order to give weight and inspire confidence. A council ought to be the medium through which the feelings of the people ought to be communicated to the Executive. The council will be organs of information respecting persons qualified for the various offices. Their opinions may be recorded, so as to be liable to be called to account and impeached—in this way, their responsibility will be certain, and for misconduct their punishment sure.

**SHERMAN** Mr Wilson has observed that in each state a single magistrate is placed at the head of the government. This is properly so, and the same policy should prevail in the federal government. But it should also be remarked that in all the states there is a council of advice, without which the first magistrate cannot act. A council is necessary to make the establishment acceptable to the people.

**HAMILTON** The Executive should be known as the Governour of the United States.

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that the President's title shall be "His Excellency."

*He shall hold his office during the term of four years, . . .*

**PINCKNEY** The President should be elected annually [by the Legislature]

**MORRIS** The President's term should be for two years with re-eligibility and no impeachment. It might be objected that two years is too short a duration. But it is likely that as long as the President behaves himself, he will be continued in his place.

WILSON The term should be for three years with re-eligibility. [Election to be by the Legislature ]

BEDFORD The term should be for three years with ineligibility for re-election after nine years [Election to be by the Legislature ]

ELLSWORTH The President's term should be for six years If the elections are too frequent, the Executive will not be firm enough There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins* His administration therefore will be attacked and misrepresented.

WILLIAMSON The expense of elections will be considerable and ought not to be unnecessarily repeated If the elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted

HOUSTON The term of office should be for seven years, with re-eligibility [Election to be by the Legislature.]

MASON The President's term should be for seven years, and re-eligibility should be prohibited [Election to be by the Legislature ]

DAVIE The term should be for eight years [Election to be by the Legislature ]

GERRY The Executive should be elected [by the Legislature] for ten, fifteen or even twenty years, and be ineligible afterwards That he should be independent of the Legislature is a clear point The longer the duration of his appointment, the more will his dependence be diminished

MARTIN The Executive should be elected [by the Legislature] for eleven years

KING The President's term should be for twenty years This is the medium life of princes [Election to be by the Legislature ]

HAMILTON The President should be elected to serve during good behavior. An executive is less dangerous to the liberties of the people when

in office during life, than for seven years. It may be said this constitutes an elective monarchy. Pray, what is a monarchy? May not the governors of the respective states be considered in that light? But by making the Executive subject to impeachment, the term monarchy cannot apply.

McCLURG The independence of the Executive is equally essential to that of the judiciary department. [Election to be by the Legislature.]

MORRIS This is the way to get a good government. I am indifferent how the Executive should be chosen, provided he holds his place by this tenure.

PINCKNEY It should be provided that no person shall be eligible for more than six years in any twelve years. This will have all the advantage, and at the same time avoid in some degree the inconvenience, of an absolute ineligibility a second time. [Election to be by the Legislature.]

MASON This idea has the sanction of experience in the instance of [the Continental] Congress and some of the executives of the states. It renders the Executive as effectually independent as an ineligibility after his first election, and opens the way at the same time for the advantage of his future services.

MADISON It should be provided in favor of the smaller states, that the Executive shall not be eligible from the same state more than a certain number of times in a specified period.

BUTLER Re-eligibility, at all events, should be prohibited.

PINCKNEY The Executive should not be re-eligible for election. It will endanger the public liberty. Also, he will become fixed for life under the auspices of the Senate,<sup>1</sup> which is to decide in case no candidate receives a majority of electoral votes.

RANDOLPH If the President ought to be independent, he should not be left under a temptation to court a reappointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. Besides, is there not great reason to apprehend that in case he should be re-eligible a false complaisance in the Legislature might lead them to continue an unfit man in office in preference to a fit one? It has been said that a Constitutional bar to reappointment will

<sup>1</sup> It was proposed to have the Senate, instead of the House, decide inconclusive elections.



inspire unconstitutional endeavors to perpetuate himself. It may be answered that his endeavors can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless.

WILLIAMSON It is probably pretty certain that we shall at some time or other have a king, but no precaution should be omitted that might postpone the event as long as possible—ineligibility a second time appears to be the best precaution. With this precaution I would go as far as a ten or twelve year term. [Election to be by the Legislature ]

MASON A second election ought to be absolutely prohibited. It is the very Palladium of civil liberty that the great officers of state, and particularly the Executive, should at fixed periods return to that mass from which they were first taken, in order that they may feel and respect those rights and interests, which are again to be personally valuable to them. [Election to be by the Legislature ]

FRANKLIN It seems to have been imagined by some that the returning to the mass of the people is degrading the magistrate This is contrary to republican principles In free governments the rulers are the servants, and the people their superiors and sovereigns For the former, therefore, to return among the latter, is not to *degrade* but to *promote* them And it would be imposing an unreasonable burden on them, to keep them always in a state of servitude, and not allow them to become again one of the masters [Election to be by the Legislature ]

*. . . and, together with the Vice President, chosen for the same term, be elected as follows*

GERRY There should be no Vice President

WILLIAMSON Such an officer as Vice President is not wanted He is introduced only for the sake of a valuable mode of election which requires two to be chosen at the same time

*Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, .*

WILSON It should be specified that the states shall be divided into a certain number of districts, and that persons qualified to vote in each district for members of the first branch of the national Legislature, shall elect a certain number of members from their district to be electors.

GERRY The electors should be chosen by the state executives The people of the states will then choose the first branch, the legislatures of the states the second branch, and the executives of the states the national Executive This will form a strong attachment in the states to the national system. The popular mode of electing the chief magistrate would certainly be the worst of all If he should be so elected and should do his duty, he will be turned out for it, like Governor Bowdoin <sup>2</sup> in Massachusetts, and President Sullivan <sup>3</sup> in New Hampshire The people are uninformed and will be misled by a few designing men

MARTIN The electors should be appointed by the several legislatures of the individual states

HAMILTON The electors should be chosen by electors chosen by the people

PINCKNEY The choice should not be made by electors, who will not have sufficient knowledge of the fittest men and will be swayed by an attachment to the eminent men of their respective states.

WILLIAMSON It should be added that the electors shall be paid out of the national treasury for the service to be performed by them Justice requires this, as it is a national service they are to render

*. equal to the whole number of senators and representatives to which the state may be entitled in the Congress, . . .*

WILLIAMSON The electors should be proportioned to representatives only.

BUTLER The states should have equality of votes The reasons for departing from this do not hold in the case of the Executive as in that of the Legislature

PATERSON Electors should be allotted to the states in a ratio allowing one elector to the smallest and three to the largest states.

<sup>2</sup> As governor of Massachusetts (1785-86), Bowdoin put down Shays's Rebellion

<sup>3</sup> Sullivan was, himself, a presidential elector in 1789

ELLSWORTH It should be specified that each state with a population not exceeding 200,000 inhabitants shall have one elector, each state having a population above that number, but not exceeding 300,000 shall have two, and each state having a population exceeding 300,000 shall have three

MADISON This ratio should either be made temporary, or so varied that it will adjust itself to the growing population of the states, since there are few that will not in time contain the number of inhabitants entitling them to three electors

GERRY The electors proposed by Mr. Ellsworth should be twenty-five in number, allotted in the following proportion New Hampshire one, Massachusetts three, Rhode Island one, Connecticut two, New York two, New Jersey two, Pennsylvania three, Delaware one, Maryland two, Virginia three, North Carolina two, South Carolina two, Georgia one

ELLSWORTH The electors allotted Georgia and New Hampshire should be increased to two each

*. . . But no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector*

ELLSWORTH Any person should be eligible as an elector, except, solely, members of the national Legislature

*The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted*

MADISON The electors should be required to meet at some place distinct

from the seat of government, and no person within a certain distance of the place at that time should be eligible. As the electors chosen for the occasion would meet at once, there would be very little opportunity for cabal or corruption.

SPAIGHT The electors should meet at the seat of the general government. They should meet all together and decide finally without any reference to the Senate.<sup>4</sup>

WILSON Electors should be prohibited from voting for anyone from their own body.

ANONYMOUS It should be provided that the list of persons voted for and the number of votes for each shall be transmitted under the seal of the state.

*The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed, .*

MADISON Instead of a majority of the whole number of electors, a majority of electors who shall have ballotted should be required, so that non-voting electors might not increase the number necessary as a majority of the whole.

MADISON One third, instead of a majority of votes, should be required.

MASON The person having the greatest number of votes, whether a majority or not, should be elected.

HAMILTON Considering the different views of different states, the votes will probably not be concentrated and the appointment will consequently, in the present mode, devolve on the Senate.<sup>5</sup> The nomination to offices will give great weight to the President. Here then is a mutual connection and influence that will perpetuate the President and aggrandize both him and the Senate.

<sup>4</sup> It was proposed to have the Senate, instead of the House, decide inconclusive elections.

<sup>5</sup> See n. 4.

*. . . and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, . . .*

**BREARLEY FOR THE COMMITTEE OF ELEVEN** It should be provided that the Senate shall choose in event of a tie

**MORRIS** The Senate is preferred because fewer can then say to the President, you owe your appointment to us

**MADISON** It is a primary object to render an eventual resort to any part of the Legislature improbable. If the whole Legislature should decide, it would turn the attention of the large states too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer, as the large states would predominate in the Legislature which would have the final choice out of the candidates. Whereas, if the Senate, in which the small states predominate, should have this final choice, the concerted effort of the large states would be to make the appointment in the first instance conclusive. At least two thirds of the Senate should be required to be present

**WILSON** The Legislature should decide in event of a tie

**SHERMAN** The Legislature, if it is to decide, should vote by states

**GERRY** The eventual election should be made by six senators and seven representatives, chosen by joint ballot of both houses

*. . . and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President*

**WILLIAMSON** The choice should be restrained to the two highest on the list, rather than the first five

**MASON** The choice should be made from the three highest

**GERRY** A choice from the seven or thirteen highest would be preferable

**SPAIGHT** Thirteen should be specified.

MORRIS It should be provided that in all cases, the President in office should not be one of the five candidates, but should be re-eligible only in case a majority of the electors should vote for him

GERRY The choice should be made by the Senate, unless the President, at the end of his term, should not be re-elected by a majority of electors, and no other candidate should have a majority, in which case the eventual election should be made by the Legislature

BREARLEY FOR THE COMMITTEE OF ELEVEN It should be provided that the Senate shall choose in the event no person has a majority.<sup>6</sup>

WILSON The Legislature should decide in event of a tie

SHERMAN The Legislature, if it is to decide, should vote by states.

GERRY The eventual election should be made by six senators and seven representatives, chosen by joint ballot of both houses

*But in choosing the President, the votes shall be taken by states, the representation from each state having one vote, a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice*

GERRY It should be provided that in the election of President by the House of Representatives, no state shall vote by less than three members, and where that number may not be allotted to a state, it shall be made up by its senators

KING A majority also of the whole number of the House of Representatives should be required for a quorum

*In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be Vice President But if there should remain two or more*

<sup>6</sup> See *supra*, p 92, for arguments

*who have equal votes the Senate shall choose from them by Ballot the Vice President*

GORHAM The Vice President should be required to have a majority of votes, or else the election should be referred to the Senate. As the regulation stands, a very obscure man with very few votes may arrive at that appointment.

*The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.*

BREARLEY FOR THE COMMITTEE OF ELEVEN It should be provided that Congress shall determine also the manner of certifying and transmitting the votes

[The following subject matter is covered by Section 1, paragraphs two, three, and four as a whole.]

RANDOLPH The Executive should be elected by the Legislature

SHERMAN For the Executive to be independent of the Legislature would be the very essence of tyranny. The sense of the nation will be better expressed by the Legislature than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. A joint ballot is objectionable, as depriving the *states*, represented in the *Senate* of the negative intended them in that house.

PINCKNEY The national legislature, being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

WILLIAMSON The Executive should be elected by the Legislature. The proposed electors will certainly not be men of the first or even the second grade in the states. These will all prefer a seat either in the Senate or the House of Representatives. If electors choose the Executive, it will be attended with considerable expense and trouble, whereas the appointment made by the Legislature will be easy and least liable to objection.

HOUSTON It is improbable that capable men will undertake the service of electors from the more distant states.

MASON Election by the national Legislature is liable to fewer objections than any other method At one moment we are told that the Legislature is entitled to thorough confidence and to indefinite power At another, that it will be governed by intrigue and corruption, and cannot be trusted at all A government which is to last ought at least to be practicable It will be as unnatural to refer the choice of a proper character for chief magistrate to the people, as it would be to refer a trial of colors to a blind man. The extent of the country renders it impossible for the people to have the requisite capacity to judge of the respective pretensions of the candidates.

GORHAM Elections should be made by the Legislature by *joint ballot*. The only objection against a joint ballot is that it may deprive the Senate of their due weight, but this ought not to prevail over the respect due to the public tranquillity and welfare

LANGDON The Executive should be elected by joint and general voice of the Legislature The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch

DAYTON The President should be chosen by the Legislature, with each state to have one vote

PINCKNEY. The President should be chosen by the Legislature, but a majority of the votes of the members present should be required

READ In addition to the provision for election by the Legislature, it should be specified that in case the numbers for the two highest votes should be equal, the president of the Senate shall have an additional casting vote

ELLSWORTH It should be provided that the Executive shall be chosen by the Legislature, except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, and be re-eligible, in which case the choice shall be made by electors appointed by the legislatures of the states for that purpose By this means, a deserving magistrate may be re-elected without making him dependent on the Legislature.

WILSON The Executive should be elected by a small number, not more than fifteen, of the national Legislature, who should be drawn from it, not by ballot, but by lot, and who should retire immediately and make



the election without separating. By this mode, intrigue would be avoided in the first instance, and the dependence would be diminished.

MORRIS It would be better that chance should decide than intrigue

RUFLEDGE The Executive should be elected by the second branch only of the national Legislature

DICKINSON The people of each state should choose their best citizen and from the thirteen names thus selected, the Executive should be appointed by the national Legislature, or by electors appointed by the national Legislature. An election by the people is the best and purest source. The greatest difficulty seems to be the partiality of the states to their respective citizens, but this very partiality might thus be turned to a useful purpose. The people will know the most eminent characters of their own states, and the people of different states will feel an emulation in selecting those of whom they will have the greatest reason to be proud.

WILSON Election of the Executive should be by the people at large. Experience, particularly in New York and Massachusetts, shows that it is both a convenient and successful mode. The objects of choice in such cases must be persons whose merits have general notoriety. The Executive should be derived from the people without the intervention of the states, in order to make him as independent as possible of the states and the Legislature, and of him. It is said that a *majority* of the people will never concur. It might be answered that the concurrence of a majority of people is not a necessary principle of election, nor required as such in any of the states. But allowing the objection all its force, it may be obviated by the expedient used in Massachusetts, where the Legislature, by a majority of voices, decides in case a majority of people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue and cabal.

MORRIS Election should be made by the people at large, by the freeholders of the country. If the people shall elect, they shall never fail to prefer some man of distinguished character or services, some man of continental reputation. If the Executive is to be the guardian of the people, let him be elected by the people. It deserves consideration also that such an ingredient in the plan will render it extremely palatable to the people.

**MADISON** With all its imperfections, I like best an election by the people, or rather the qualified part of them, at large. There are two objections against this mode which have weight. The first arises from the disposition in the people to prefer a citizen of their own state, and the disadvantage this would throw on the smaller states. Great as this objection might be, it is not equal to such as lie against every other mode which has been proposed. The second difficulty arises from the disproportion of qualified voters in the northern and southern states, and the disadvantages which this mode would throw on the latter. This disproportion will be continually decreasing under the influence of the republican laws introduced in the southern states and the more rapid increase of their population. In addition, local considerations must give way to the general interest.

**WILLIAMSON** The Executive should be elected by the people, each man voting for three candidates. The principal objection against an election by the people seems to be the disadvantage under which it would place the smaller states. This method would cure the difficulty. One vote of each man will probably be for someone of his own state, the other two for persons of some other states, and as probably of a small as a large one.

**MORRIS** The Executive should be elected by the people, with each man voting for two persons, one of whom at least should not be of his own state.

**GERRY** The legislatures of the states should vote by ballot for the Executive in the same proportion as it has been proposed they should choose electors, and in case a majority of the votes should not center on the same person, the first branch of the national Legislature should choose two out of the four candidates having most votes, and out of these two the second branch should choose the Executive.

**GERRY**. The President should be chosen by the executives of the states, whose votes should count in proportion to their weight in the scale of the representation.

**GERRY** The President should be appointed by the governors and presidents of the states with advice of their councils, and where there are no councils, by electors chosen by the state legislatures.

GERRY The President should be appointed by electors from nominations made by the state legislatures

*No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States*

RUTLEDGE FOR THE COMMITTEE OF AUGUST 22 It should be specified that the President shall be a citizen of the United States and shall have been an inhabitant thereof for twenty-one years

MASON AND PINCKNEY Certain qualifications of landed property should be required, and persons having unsettled accounts with, or being indebted to, the United States should be disqualified.

PINCKNEY Though an undue aristocratic influence should not be established in the Constitution, it is essential that the President should be possessed of competent property to make him independent and respectable. It is prudent when such great powers are to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. The President will have a very great influence on the fate of the nation. Were I to fix the quantum of property which should be required, I would not think of less than \$100,000 for the President. He should be required to swear that he is possessed of a clear, unencumbered estate to a specified amount.

*In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.*

HAMILTON On the death, resignation or removal of the Executive, his authorities should be exercised by the president of the Senate [to be elected by the Senate] until a successor is appointed.

MORRIS The Chief Justice should be provisional successor to the President.

MADISON The executive powers during a vacancy should be administered by the persons composing the council to the President.

ANONYMOUS The Legislature should not be restrained, in the temporary appointments, to officers of the United States, but should be at liberty to appoint others

RANDOLPH It should be specified that "such officer shall act accordingly, until the time of electing a President shall arrive "

*The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.*

FRANKLIN It should be provided that the Executive's necessary expenses shall be defrayed, but that he shall receive no salary, stipend, fee or reward whatsoever for his services There are two passions which have a powerful influence on the affairs of men These are ambition and avarice, the love of power, and the love of money Separately, each of these has great force in prompting men to action, but when united in view of the same object, they have in many minds the most violent effects Place before the eyes of such men a post of *honor* that shall be at the same time a place of *profit*, and they will move heaven and earth to obtain it The vast number of such places it is that renders the British government so tempestuous And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest

for the trust Besides these evils, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them The more the people are discontented with the oppression of taxes, the greater need the prince has of money to distribute among his partisans and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. It will be said that we don't propose to establish kings I know it But there is a natural inclination in mankind to kingly government It sometimes relieves them from aristocratic domination They had rather have one tyrant than five hundred. It gives more of an appearance of equality among citizens, and that they like It may be imagined by some that this is a Utopian idea, and that we can never find men to serve us in the executive department, without paying them well for their services Some existing facts present themselves to me, which incline me to a contrary opinion The high sheriff of a county in England is an honorable office, but it is not a profitable one It is rather expensive and therefore not sought for But yet, it is executed and well executed, and usually by some of the principal gentlemen of the county In France, the office of counsellor or member of their judiciary parliaments is more honorable It is, therefore, *purchased at a high price* There are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than three per cent on the sum paid for the place Therefore, as legal interest is there at five per cent, they in fact pay two per cent for being allowed to do the judiciary business of the nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services I do not mean, however, to recommend this as an eligible mode for our judiciary department I only bring the instance to show that the pleasure of doing good and serving their country and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction The Quakers also have made the experiment and practiced it with success more than a hundred years To bring the matter nearer home, have we not seen the great and most important of our offices, that of General of our armies, executed for eight years together without the smallest salary, by a patriot whom I will not

now offend by any other phrase? And shall we doubt finding three or four men in all the United States with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed? I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question. The saving of the salaries is not an object with me. The subsequent mischiefs are what I apprehend.

PATERSON The President should be prohibited from holding any other office or appointment during his time of service and for a period thereafter.

*Before he enter on the execution of his office, he shall take the following oath or affirmation "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."*

WILSON This should be omitted. The general provision for oaths of office, in a subsequent place, renders it unnecessary.

## SECTION 2

*The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States,*

PATERSON The Executive should direct all military operations, but should be prohibited from taking command of troops so as to personally conduct any military enterprise as general or in other capacity.

*. . . he may require the opinion, in writing, of the principal officer in each of the executive departments upon*

*any subject relating to the duties of their respective offices, . . .*

DICKINSON If the great appointments should be made by the Executive, they should not be consulted by him, but if made by the Legislature, they might properly be consulted by the Executive.

MERCER The Executive should have a council composed of members of both houses. The Legislature must and will be composed of wealth and abilities Without such an influence on the President, the war will be between the aristocracy and the people It should be between the aristocracy and the Executive

MORRIS It should be specified that to assist the President in conducting the public affairs, there shall be a council of state composed of the following officers

1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the United States as may, in his opinion, be necessary to the due administration of justice, and such as may promote useful learning and inculcate sound morality throughout the Union He shall be president of the council in the absence of the President.

- 2 The Secretary of Domestic Affairs, who shall attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations and the facilitating communications through the United States, and he shall from time to time recommend such measures and establishments as may tend to promote those objects

- 3 The Secretary of Commerce and Finance, who shall superintend all matters relating to the public finances, and shall prepare and report plans of revenue and for the regulation of expenditures, and also recommend such things as may, in his judgment, promote the commercial interests of the United States

- 4 The Secretary of Foreign Affairs, who shall correspond with all foreign ministers, prepare plans of treaties and consider such as may be transmitted from abroad, and generally attend to the interests of the United States in their connection with foreign powers

5. The Secretary of War, who shall superintend everything relating

to the war department, and in time of war shall prepare and recommend plans of offense and defense

6. The Secretary of the Marine, who shall superintend everything relating to the marine department, and in time of war prepare and recommend plans of offense and defense

It should be specified also that the President shall appoint a Secretary of State, who shall be secretary to the council of state, and also public secretary to the President. It shall be his duty to prepare all public despatches from the President, which he shall countersign. It should be provided that the President may from time to time submit any matter to the discussion of the council of state, and may require the written opinions of any one or more of the members, but that he shall in all cases exercise his own judgment, and either conform to such opinions or not, as he may think proper

#### ELLSWORTH AND RUTLEDGE FOR THE COMMITTEE OF AUGUST 22

It should be specified that the President shall have a privy council, which shall consist of the president of the Senate, the speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine and finance, as such departments of office shall from time to time be established, whose duty it shall be to advise him in matters respecting the execution of his office, which he shall think proper to lay before them, but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt

MASON An executive council should be established for the President, to consist of six members, two from the eastern, two from the middle and two from the southern states, with a rotation and duration of office similar to the Senate's, such council to be appointed by the Legislature or by the Senate. In rejecting a council for the President, we are about to try an experiment on which the most despotic governments have never ventured

FRANKLIN A council would not only be a check on a bad President but be a relief to a good one

GERRY A council should be the medium through which the feelings of the people ought to be communicated to the Executive. The heads of



the departments, particularly of finance, should have nothing to do in business connected with legislation. The Chief Justice is also particularly exceptionable. These men will also be so taken up with other matters as to neglect their own proper duties.

**PINCKNEY** It should be specified that no person holding the office of secretary for the department of foreign affairs, of finance, of marine, of war, or similar office, shall be capable of holding at the same time any other office of trust or emolument under the United States or an individual state.

*. . . and he shall have power to grant reprieves and pardons for offences against the United States except in cases of impeachment*

**RANDOLPH** Cases of treason should be excepted. The prerogative of pardon in these cases is too great a trust. The President may himself be guilty. The traitors may be his own instruments.

**HAMILTON** It should be specified that the President can pardon treason only with the approbation of the Senate.

**MADISON** The pardon of treasons is so peculiarly improper for the President, that although there is great force to the objections to the Legislature possessing this power,<sup>7</sup> it would be better to transfer it to the Legislature than to leave it altogether in the hands of the President. Better than either would be the association of the Senate, as a council of advice, with the President.

**SHERMAN** Instead of the unqualified power to grant reprieves and pardons, it should be provided that the President shall have power to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate.

<sup>7</sup> "It would be inconsistent with the Constitutional separation of the Executive and legislative powers to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that state, the next was equally disposed to pardon them all. It might be expedient, however, to require the concurrence of the Senate in acts of pardon."—KING

MARTIN The words "after conviction" should be inserted after the words "reprieves and pardons."

*He shall have power, by and with the advice and consent of the Senate, to make treaties, . . .*

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that the Senate has the power to make treaties.

MADISON A concurrence of two thirds of the senators present should be sufficient to make treaties of peace, without the concurrence of the President The President will necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace

BUTLER This is a necessary security against ambitious and corrupt Presidents For example, there is the late perfidious policy of the Statholder of Holland, and the artifices of the Duke of Marlborough to prolong the war of which he had the management

MORRIS It should be added to the provision giving the Senate power to make treaties,<sup>8</sup> that no treaty which is not ratified by a law shall be binding on the United States

BUTLER The Legislature should have the power of peace, as they are to have the power of war

GERRY The Senate are much more liable to be corrupted by an enemy than the whole Legislature

WILSON It should be specified that the President shall make treaties by and with the advice of the Senate and House of Representatives As treaties are to have the operation of laws, they ought to have the sanction of laws also The circumstance of secrecy in the business of treaties forms the only objection, but this, so far as it is inconsistent with obtaining the legislative sanction, is outweighed by the necessity of the latter

MADISON A distinction should be made between the different sorts of treaties The President and Senate should be allowed to make treaties

<sup>8</sup> Such a provision was under discussion

eventual and of alliance for limited terms, and the concurrence of the whole Legislature should be required in other treaties.

SHERMAN It should be provided that no rights established by the treaty of peace [with Great Britain] shall be ceded without the sanction of the Legislature.

*. provided two thirds of the senators present concur, .*

WILSON Concurrence of two thirds of the senators present should not be required This puts it in the power of a minority to control the will of a majority If the majority cannot be trusted, it is a proof that we are not fit for one society

KING As the Executive is here joined in the business, there is a check which did not exist in [the Continental] Congress where the concurrence of two thirds was required

MADISON The concurrence of two thirds of the senators present should be necessary except for the treaties of peace, which should be allowed to be made with less difficulty than other treaties

MORRIS If two thirds of the Senate should be required for peace, the Legislature will be unwilling, for that reason, to make war on account of the fisheries or the Mississippi, the two great objects of the Union Besides, if a majority of the Senate is for peace, and is not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode of negating the supplies for the war

WILSON If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority

GERRY In treaties of peace, a greater, rather than less, proportion of votes should be required In treaties of peace, the dearest interests will be at stake, as the fisheries, territory, etc In treaties of peace also there is more danger, to the extremities of the continent, of being sacrificed, than on any other occasions

RUILEGE It should be specified that two thirds of all the members of the Senate shall be required to ratify a treaty

SHERMAN It should be provided that no treaty shall be made without consent of a majority of the whole number of the Senate

MADISON It should be specified that a quorum of the Senate shall consist of two thirds of all the members

WILLIAMSON It should be specified that no treaty shall be made without previous notice to the members of the Senate and a reasonable time for their attending

*and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments*

*The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session*

DICKINSON All the great appointments should be made by the Legislature Then such officers might properly be consulted by the Executive

MASON A privy council of six members should be established, to be chosen for six years by the Senate, two members out of the eastern, two out of the middle and two out of the southern sections of the Union, to go out in rotation, two every second year, who should, with the President, make appointments It is not desirable to make any reference whatever of the power to make appointments to either branch of the Legislature On the other hand, it is not desirable to vest so dangerous a power in the President alone This method would avoid both The Senate is too unwieldy and expensive for appointing officers, especially the smallest, such as tide

waiters, etc , and their concurrence should be required only in the appointment of ambassadors

FRANKLIN We seem too much to fear cabals in appointments by a number and to have too much confidence in those of single persons

WILSON Good laws are of no effect without a good Executive, and there can be no good Executive without a responsible appointment of officers to execute Responsibility is in a manner destroyed by such an agency of the Senate The council proposed by Col Mason is preferable, provided its advice would not be made obligatory on the President

MADISON It should be specified that the President shall appoint officers in all cases not otherwise provided for

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that the President shall appoint officers in all cases not otherwise provided for in this Constitution

RANDOLPH The Legislature should be left at liberty to refer appointments in some cases to some state authority

DICKINSON It should be provided that the President shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law, except where by law the appointment shall be vested in the legislatures or executives of the several states

MADISON The clause giving Congress power to vest the appointment of inferior officers in the President, in the courts, or in the heads of departments, should be changed It does not go far enough if it be necessary at all Superior officers below heads of departments ought in some cases to have the appointment of the lesser officers

ANONYMOUS It is unnecessary to specify that offices must be established by the Constitution or by law

PINCKNEY The Senate should not participate in appointments, except in the instance of ambassadors, who ought not to be appointed by the President.

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that ambassadors shall be appointed by the Senate

**PINCKNEY** The judges of the Supreme Court should be chosen by the Legislature.

**MADISON** The judges should be chosen by the senatorial branch, which, though numerous enough to be confided in, is not numerous enough to be governed by the motives of the other branch, and which is sufficiently stable and independent to follow its own deliberate judgments. The election of the judges by the whole Legislature is not desirable. Besides the danger of intrigue and partiality, many of the members are not judges of the requisite qualifications. The legislative talents, which are very different from those of a judge, commonly recommend men to the favor of legislative assemblies. It is known too, that the accidental circumstances of presence and absence, of being a member or not a member, have an undue influence on the appointment. On the other hand, the appointment should not be referred to the Executive.

**MARTIN** Being taken from all the states, the second branch will be best informed of characters and most capable of making a fit choice.

**SHERMAN** The judges ought to be diffused, which will be more likely to be attended to by the second branch than by the Executive. The Senate will be composed of men nearly equal to the Executive, and will of course have on the whole more wisdom. It will be less easy for candidates to intrigue with them than with the Executive.

**RANDOLPH** The advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members on appointment of judges to be entered on the journal.

**PINCKNEY** The appointment should be placed in the second branch exclusively. The Executive will possess neither the requisite knowledge of characters nor the confidence of the people for so high a trust.

**MASON** The appointment divided between the Executive and the Senate is substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. The appointment by the Executive is a dangerous prerogative. It might even give him an influence over the judiciary department itself,

ELLSWORTH The judges should be nominated by the Senate, and the Executive should have a negative on the nomination, the negative to be over-ruled by a concurrence of two thirds of the Senate. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it is not to be supposed he can have a better knowledge of characters, and he will be more open to caresses and intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

FRANKLIN The judges might be appointed by the lawyers. In Scotland, the nomination proceeds from the lawyers, who always select the ablest of the profession in order to get rid of him and share his practice among themselves. Thus it is in the interest of the electors to make the best choice, which should always be made the case, if possible.

WILSON The judges should be appointed by the Executive. Experience has shown the impropriety of such appointments by numerous bodies. Intrigue, partiality and concealment are the necessary consequences. A principal reason for unity in the Executive is that officers might be appointed by a single responsible person.

MADISON It should be specified that the judges shall be nominated by the Executive, and that such nominations shall become appointments if not disagreed to within a certain number of days by two thirds of the Senate. This method will secure the responsibility of the Executive, who will in general be more capable and likely to select fit characters than the Legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment. In case of any flagrant partiality or error in the nomination, it might be fairly presumed that two thirds of the second branch will join in putting a negative on it. The Executive will be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the judges might be appointed by a minority of the people, though by a majority of the states, which cannot be justified on any principle, as the judiciary proceedings are to relate to the people, rather than to the states, and as it will, moreover, throw the appointments entirely into the hands of the northern states, a perpetual

ground of jealousy and discontent will be furnished to the southern states. MORRIS The states, in their corporate capacity, will frequently have an interest staked on the determination of the judges, and next to the impropriety of being judge in one's own cause is the appointment of the judge. The Senate will be more uninformed of characters than the Executive. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. If the Executive can safely be trusted with the command of the army, there cannot, surely, be any reasonable ground of jealousy in the present case.

MADISON The judges should be appointed by the Executive with the concurrence of one third, at least, of the second branch.

GORHAM It should be provided that the judges shall be nominated and appointed by the Executive by and with the advice and consent of the Senate, but that every such nomination shall be made at least a specified period of days prior to such appointment.

PINCKNEY It should be specified that the Legislature shall have the exclusive right of instituting in each state a court of admiralty and appointing the judges of the same.

HAMILTON It should be specified that the Executive shall appoint all military officers.

MORRIS It should be specified that the President shall appoint the Secretary of Domestic Affairs, the Secretary of War, the Secretary of Marine, the Secretary of Commerce and Finance, the Secretary of Foreign Affairs, and the Secretary of State, to hold their offices during pleasure.

HAMILTON It should be provided that the President shall have the sole appointment of the heads of the departments of finance, war and foreign affairs.

PINCKNEY It should be provided that the Legislature shall institute offices and appoint officers for the departments of foreign affairs, war, treasury and admiralty.



RUTLEDGE FOR THE COMMITTEE OF DETAIL The Legislature should appoint a treasurer by ballot.

MASON If the money belongs to the people, the Legislature, representing the people, ought to appoint the keepers of it

GORHAM The people are accustomed and attached to that mode of appointing treasurers, and an innovation will multiply objections to the system

SHERMAN As the two houses appropriate money, it is best for them to appoint the officer who is to keep it

### SECTION 3

*He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient, he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, he shall receive ambassadors and other public ministers, he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States*

WILSON The President should not have power to convene *either* of the houses on extraordinary occasions, because this implies that the Senate might be in session when the House of Representatives is not, which is improper

PINCKNEY It should be specified that all commissions and writs shall run in the name of the United States

MADISON It should be specified that the President shall have power to execute such other powers, not legislative or judicial in their nature, as may from time to time be delegated by the national Legislature

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that the President may correspond with the supreme executives of the several states.

## SECTION 4

*The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

SHERMAN The Executive should be removable by the national Legislature at pleasure. The Executive is nothing more than an institution for carrying the will of the Legislature into effect, and the person or persons composing the Executive should be accountable to the Legislature only, which is the depository of the supreme will of the society. An independence of the Executive from the Legislature is the very essence of tyranny.

DICKINSON It should be provided that the Executive shall be removable by the national Legislature on the request of a majority of the legislatures of the individual states. It is necessary to place the power of removing somewhere. The plan of impeaching the great officers of state is not desirable. The happiness of this country requires considerable powers to be left in the hands of the states.

PATERSON The President should be removable by the national Legislature on application by a majority of the executives of the several states.

MORRIS The Executive should not be impeachable.<sup>9</sup> This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. There must be certain great officers of state, a minister of finance, of war, of foreign affairs, etc., who will exercise their functions in subordination to the Executive and will be amenable, by impeachment, to the public justice. Without these ministers, the Executive can do nothing of consequence. He can do no criminal act without coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Is the impeachment to

<sup>9</sup> This suggestion was in association with a proposal that the President's term be for two years.

*suspend his functions?* If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

KING The Executive should be independent and separate equally with the judiciary. It has been said that the judiciary will be impeachable, but it should be remembered that the judiciary hold their places not for a limited time, but during good behavior. The Executive is to hold his place for a limited term, like the members of the Legislature. Like them, he will periodically be tried for his behavior by his electors, who will continue or discontinue him in trust according to the manner in which he has discharged it. Like them, therefore, he should be subject to no intermediate trial by impeachment. He ought not to be impeachable unless he holds his office during good behavior, but under no circumstances should he be impeachable by the Legislature. This will be destructive of his independence and of the principles of the Constitution.

MORRIS The President should be impeachable only for corruption and some few other offenses to be enumerated and defined, including treachery, corrupting his electors, and incapacity. It should be specified that he and his council shall be liable to impeachment and removal from office for neglect of duty, malversation or corruption.

MADISON. Some provision should be made for loss of capacity and negligence. Loss of capacity or corruption of the Executive are within the compass of probable events, and either of them might be fatal to the republic.

MASON The President should be subject to impeachment and removal for maladministration.

DICKINSON It should be specified that the judges of the Supreme Court and of the inferior courts shall be removable by the Executive on application by the Senate and House of Representatives. A legislature composed of different branches constructed on such different principles is not likely to unite improperly for the purpose of displacing a judge.

SHERMAN This is no contradiction or impropriety, if it is made part of the constitutional regulation of the judiciary establishment. A like provision is contained in the British statutes.

## ARTICLE III

### SECTION I

*The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.*

HAMILTON It should be specified that the supreme judicial authority of the United States shall be vested in twelve judges

RANDOLPH The national judiciary should consist of one or more supreme tribunals

GERRY A tribunal should not be established without juries It will be a Star Chamber as to civil cases

RANDOLPH Inferior tribunals should be established by the Constitution [with judges to be chosen by Congress]

HAMILTON It should be provided that the Legislature appoint courts in each state, so as to make the state governments unnecessary to it.

PINCKNEY It should be specified that Congress have the exclusive right of instituting in each state a court of admiralty

RUTLEDGE Provision should be made for no national tribunals except a single supreme one The state tribunals are most proper to decide in all cases in the first instance Establishment of inferior national tribunals will make unnecessary encroachments on the jurisdiction of the states and create unnecessary obstacles to their adoption of the new system

MARTIN A national judiciary extended into the states will be ineffectual and will be viewed with a jealousy inconsistent with its usefulness It will interfere with the jurisdiction of the state tribunals.

PATERSON Powers given Congress should be qualified by the provision that all punishments, fines, forfeitures and penalties incurred for contravening acts, rules and regulations of Congress be adjudged by the common law judiciaries of the state in which the offense is committed, with liberty of commencing action in the superior common law judiciary in the state, subject to correction of all errors, both in law and fact, in rendering judgment, to an appeal to the judiciary of the United States [consisting of one supreme tribunal].

PINCKNEY It should be specified that Congress shall have power to institute a federal judicial court to which an appeal shall be allowed from the judicial courts of the several states in all causes wherein certain questions <sup>1</sup> shall arise

SHERMAN Congress, in establishing inferior tribunals, should make use of the state tribunals whenever possible with safety to the general interest.

*The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office*

RANDOLPH No increase in the judges' salaries should be made so as to affect the persons actually in office at the time of such increase

MADISON The dependence will be less if an increase alone should be permitted, rather than an increase or diminution, but it will be improper even so far to permit a dependence. Whenever an increase is wished by the judges, or may be in agitation in the Legislature, an undue complaisance in the judges may be felt towards the Legislature. If at such a crisis there should be in court suits to which the leading members of the Legislature may be parties, the judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money may be guarded against by taking for a standard wheat or some

<sup>1</sup> These questions were to be specified as those involving the construction of treaties made by the United States or the laws of nations or the regulations of the United States concerning trade and revenue or wherein the United States shall be a party

other thing of permanent value The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may be easily so contrived as not to affect persons in office.

RANDOLPH It should be specified that judges' compensations shall not be diminished or increased by any act of the Legislature which shall operate before the expiration of three years after the passing thereof.

PATERSON It should be specified that none of the judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment, or for a certain period thereafter

MASON AND PINCKNEY Judges should be required to have certain qualifications of landed property, and persons having unsettled accounts with, or being indebted to, the United States should be disqualified

PINCKNEY Though an undue aristocratic influence should not be established in the Constitution, it is essential that the judges should be possessed of competent property to make them independent and respectable It is prudent when such great powers are to be trusted, to connect the tie of property with that of reputation in securing a faithful administration The judges will have not only important causes between citizen and citizen, but also where foreigners are concerned They will even be the umpires between the United States and individual states, as well as between one state or another Were I to fix the quantum of property which should be required, I would not think of less than \$50,000 for each of the judges They should be required to swear that they are respectively possessed of a clear, unencumbered estate to a specified amount

## SECTION 2

*The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority,*

MADISON The jurisdiction of the court should not be extended generally to cases arising under the Constitution. This may be going too far, it

should be limited to cases of a judiciary nature <sup>2</sup> The right of expounding the Constitution in cases not of this nature ought not to be given to that department

**READ** The powers of law and equity should not be vested in the same court

*. . . to all cases affecting ambassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects*

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified In all disputes and controversies now subsisting, or that may hereafter subsist between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given by order of the Senate to the legislature or the executive authority of the other state in controversy The Senate shall also assign a day for the appearance of the parties, by their agents, before that house The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question But if the agents cannot agree, the Senate shall name three persons out of each of the several states, and from the list of such persons each party shall alternately strike one out, until the number shall be reduced to thirteen, and from that number not less than seven nor more

<sup>2</sup> The word "cases" has been interpreted to mean "the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs The term implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication" (*Muskra v United States* 219 US 346-56 [1911])

than nine names, as the Senate shall direct, shall in their presence be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, provided a majority of the judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection or hope of reward."<sup>3</sup>

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions as they respect such lands shall have been decided or adjusted subsequently to such grants, or any of them, shall on application to the Senate, be finally determined, as near as may be, in the same manner as before prescribed for deciding controversies between different states.<sup>4</sup>  
**GORHAM** This mode will probably be more satisfactory than to refer such cases to the judiciary. The judges might be connected with the states involved.

**RANDOLPH** It should be specified that the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

<sup>3</sup> These provisions follow the method prescribed by the Articles of Confederation for settling such disputes. There, in addition, a proviso was included that no state shall be deprived of territory for the benefit of the United States.

<sup>4</sup> See n. 3.



PINCKNEY It should be specified that each branch of the Legislature, as well as the supreme Executive, shall have authority to require the opinions of the Supreme Judicial Court upon important questions of law, and upon solemn occasions

*In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations as the Congress shall make*

RANDOLPH It should be provided that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies and felonies on the high seas, captures from an enemy, cases in which foreigners or citizens of other states applying to such jurisdictions may be interested, or which respect the collection of the national revenue, impeachments of any national officers, and questions which may involve the national peace and harmony

HAMILTON It should be specified that the Supreme Court shall have original jurisdiction in all causes of capture, and an appellate jurisdiction [from the courts of the several states] in all causes in which the revenues of the general government or the citizens of foreign nations are concerned

PATERSON It should be provided that the Supreme Court shall have authority to hear and determine in the first instance on all impeachments of federal officers, and by way of appeal from the state courts in the dernier resort in all cases touching the rights of ambassadors, in all cases of captures from an enemy, in all cases of piracies and felonies on the high seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or cases which may arise on any of the acts for the regulation of trade or the collection of federal revenue

PINCKNEY It should be provided that the Supreme Court shall have appellate jurisdiction only [from state courts] to extend to all causes

wherein questions shall arise on the construction of treaties made by the United States, or on the laws of nations, or on the regulations of the United States concerning trade and revenue, or wherein the United States shall be a party

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that in cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which the state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases beforementioned <sup>8</sup> it shall be appellate with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction abovementioned, except the trial of the President of the United States, in such manner and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time

**ANONYMOUS** Instead of providing that "in all other cases" the Supreme Court shall have appellate jurisdiction, it should be specified that in all other cases the judicial power shall be exercised in such manner as the Legislature shall direct.

*The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed*

**WILLIAMSON** Provision should be made for juries in civil cases.

**GERRY** Juries are necessary to guard against corrupt judges

**PINCKNEY** It should be specified that a trial by jury shall be preserved as usual in civil cases.

[No clause covering the following subject matter is included in the Constitution ]

<sup>8</sup> Cases arising under laws passed by the Legislature of the United States, cases of admiralty and maritime jurisdiction, cases between citizens of different states, and cases between citizens of the United States and foreign states, citizens or subjects. It is also stated here that the jurisdiction of the Supreme Court extends to all these cases.

PINCKNEY It should be specified that all writs shall run in the name of the United States

### SECTION 3

*Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court*

*The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted*

PINCKNEY It should be specified that Congress shall have the exclusive power of declaring what shall be treason and misprision of treason against the United States.

MORRIS The Union should be given an exclusive right to declare what shall be treason In case of a contest between the United States and a particular state, the people of the latter must, under the disjunctive terms of the clause, be traitors to one or other authority

MADISON The definition is too narrow More latitude should be left to the Legislature It will be as safe as in the hands of the state legislatures, and it is inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused

ANONYMOUS "Against the United States" should be struck out, so as to define treason generally

MADISON As the definition is of treason against *the* United States, it would seem that the individual states will be left in possession of a concurrent power so far as to define and punish treason particularly against themselves, which might involve double punishment

RUTLEDGE FOR THE COMMITTEE OF DETAIL Treason against the United States should be defined as consisting only of levying war against the United States, *or any of them*, etc.

**MASON** The United States will have a qualified sovereignty only. The individual states will retain a part of the sovereignty. If "or any of them" is omitted, an act may be treason against a particular state which is not so against the United States. The rebellion of Bacon in Virginia is an illustration of the doctrine.

**WILSON** "Giving aid and comfort" should be omitted. They are explanatory, not operative words.

**DICKINSON** The addition of "giving aid and comfort" is unnecessary and improper, being too vague and extending too far.

**ANONYMOUS** The words, "or on confession in open court" should be omitted. They are superfluous.

**DICKINSON** Proof of an overt act ought to be expressed as essential in the case.

**MORRIS** The words of the British statute should be substituted, as follows: "Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of treason, it is therefore ordained, declared and established, that if a man do levy war against the United States, within their territories, or be adherent to the enemies of the United States within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed by the people of his condition, he shall be adjudged guilty of treason."

## ARTICLE IV

### SECTION I

*Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof*

**WILLIAMSON** The words of the Articles of Confederation should be substituted "Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state "

**RANDOLPH** Instead of giving Congress power to prescribe the manner in which acts, records and proceedings shall be proved, and the effect thereof, it should be specified that whenever the act of any state, whether legislative, executive or judicial, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act—and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done There is no instance of one nation executing judgments of the courts of another nation

**MORRIS** It should be specified that Congress shall, by general laws, determine the proof and effect of such acts, records and proceedings

**RUTLEDGE FOR THE COMMITTEE OF AUGUST 29** It should be specified that Congress shall prescribe the effect which judgments obtained in one state shall have in another

**JOHNSON** To substitute "thereof" for the words "which judgments obtained in one state shall have in another," might be to authorize the gen-

eral legislature to declare the effect of legislative acts of one state in another state.

RANDOLPH To substitute the word "thereof" is to strengthen the general objection against the plan, that its definition of the powers of the government is so loose as to give it opportunities of usurping all the state powers. We should not go farther than to enable the legislature to provide for the effect of *judgments*

## SECTION 2

*The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states*

PATERSON It should be specified that a citizen of one state committing an offense in another state of the Union shall be deemed guilty of the same offense as if it had been committed by a citizen of the state in which the offense was committed

GENERAL PINCKNEY Some provision should be included, with this clause, in favor of property in slaves

*A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime*

*No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due*

BUTLER It should be specified that fugitive slaves and servants shall be "delivered up like criminals"

SHERMAN There is no more propriety in the public seizing and surrendering a slave or servant, than a horse.

## SECTION 3

*New states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress*

GERRY The number of new states to be admitted into the Union should be limited in such a manner that they shall never be able to outnumber the Atlantic states

MORRIS The Legislature should be free to admit new states on unequal terms. It is impossible to discourage the growth of the western country, but we should not throw the power into their hands

LANGDON Circumstances might arise which would render it inconvenient to admit new states on terms of equality

WILLIAMSON The existing *small* states enjoy an equality now, and for that reason are admitted to it in the Senate. The reason is not applicable to new western states

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that consent of two thirds of the members present in each house shall be necessary for admission of new states

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that if the admission be consented to, the new states shall be admitted on the same terms with the original states, but the Legislature may make conditions with the new states concerning the public debt, which shall be then subsisting

SHERMAN The Constitution should fix an equality of privileges

MADISON It should be specified that Congress shall have power to institute temporary governments for new states arising within the unappropriated lands of the United States

MARTIN It should be provided that the Legislature of the United States shall have power to erect new states within, as well as without, the territory claimed by the several states or either of them, and admit the same into the Union. Consent of states should not be necessary for establishing new states within their limits. Nothing will so alarm the limited states as to make the consent of the large states, claiming western lands, necessary to the establishment of new states within their limits. It is proposed to guarantee the states. Shall Vermont be reduced by force in favor of the states claiming it? Frankland and the western country of Virginia are in a like situation. It is unreasonable to force and guarantee the people of Virginia beyond the mountains, the western people of North Carolina and of Georgia, and the people of Maine to continue under the states now governing them without the consent of those states to their separation. Even if they should become the *majority*, the majority of *counties*, as in Virginia, may still hold fast the dominion over them. Again, the majority may place the seat of government entirely among themselves and for their own convenience, and still keep the injured parts of the states in subjection, under the guarantee of the general government against domestic violence.

LANGDON Requiring consent of the state legislatures will excite a dangerous opposition to the plan. If Vermont is not taken in and remains exempt from taxes, it will prove of great injury to New Hampshire and the other neighboring states.

DICKINSON It is improper to require the small states to secure the large ones in their extensive claims of territory.

READ The idea of guaranteeing territory abets the idea of distinct states, which will be a perpetual source of discord. There can be no cure for this evil but doing away states altogether and uniting them all into one great society.

JOHNSON It should be specified that no new state shall *hereafter* be formed or erected within the limits of any other state without the consent of the legislature of the state concerned. As Vermont is already formed into a state, this will the more clearly save her from dependence on the consent of New York to her admission.<sup>1</sup>

<sup>1</sup> At Morris's suggestion, "limits" was changed to "jurisdiction" to provide for the case of Vermont.



SHERMAN The provision requiring the consent of the state legislatures should be omitted It is unnecessary The Union cannot dismember a state without its consent

WILLIAMSON Nothing with regard to this question should be done in the Constitution The whole matter should be left in status quo

*The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state*

MADISON It should be specified that Congress shall have power to dispose of the unappropriated lands of the United States

WILSON Nothing should be inserted about the claims of the United States There is nothing in the Constitution affecting one way or the other these claims, and it is best to leave everything on that litigated subject in status quo

MADISON The claim of the United States is in fact favored by the jurisdiction of the judicial power of the United States over controversies to which they shall be parties It is best, on the whole, to be silent on the subject

RUTLEDGE It is wrong to insert a proviso where there is nothing which it can restrain, or on which it can operate

CARROLL It should be specified that all claims of the United States, or of the individual states, to the western territory, shall be examined into and decided upon by the Supreme Court of the United States

MARTIN This is proper in order to remove all doubts on this point

CARROLL It should be specified that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the treaty of peace [with Great Britain]. This might be

understood as relating to lands not claimed by any particular states, but I have also in view some of the claims of particular states

## SECTION 4

*The United States shall guarantee to every state in this union a republican form of government, . .*

ANONYMOUS A republican constitution and its existing laws should be guaranteed to each state by the United States

RANDOLPH This resolution has two objects (1) to secure republican government, and (2) to suppress domestic commotions

GERRY The national legislators should be sworn to preserve the state constitutions, as they will run the greatest risk of being annihilated.

WILLIAMSON The guarantee of a republican government should be omitted. It is unnecessary, as the Union will become the law of the land.

MADISON Instead of guaranteeing a republican form of government, it should be specified that the constitutional authority of the states shall be guaranteed to them respectively against domestic as well as foreign violence.

*. . . and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.*

MARTIN The states should be left to suppress rebellions themselves.

RUTLEDGE The guarantee to protect the states against rebellion and invasion should be omitted. No doubt can be entertained but that [the Continental] Congress had the authority, if they had had the means, to cooperate with any state in subduing a rebellion. It was and will be involved in the nature of the thing

PINCKNEY The states should mutually guarantee each other and their rights against all other powers and against all rebellion.

PINCKNEY "On the application of its legislature" should be struck out

LANGDON The apprehension of the national force will have a salutary effect in preventing insurrections

MORRIS We are acting a very strange part We first form a strong man to protect us, and at the same time wish to tie his hands behind him The national Legislature may surely be trusted with such a power to preserve the public tranquillity As for adding "or on the application of the executive," the executive may possibly be at the head of the rebellion

DICKINSON It is of essential importance to the tranquillity of the United States that they should in all cases suppress domestic violence, which may proceed from the state legislature itself, or from disputes between the two branches when such exist

DAYTON The conduct of Rhode Island shows the necessity of giving latitude to the power of the United States on this subject

RANDOLPH The provision for not requiring the application of the legislature when they cannot meet should be omitted If the national Legislature is to judge whether the state legislature can or cannot meet, that amendment will make the clause as objectionable as not requiring their application at all

MADISON It should be specified that the state shall, on application of the legislature, be protected from rebellion against the state government. There might be a rebellion against the United States

## ARTICLE V

*The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, .*

PINCKNEY Provision for amending the Constitution should not be made. The propriety and necessity of it are doubtful

MORRIS The Legislature should be left at liberty to call a convention whenever they please

HAMILTON The national Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought to be empowered, whenever two thirds of each branch should concur, to call a convention <sup>1</sup>

MADISON It should be specified that Congress shall propose amendments on the application of two thirds of the legislatures of the several states. Why would Congress not be as much bound to propose amendments applied for by two thirds of the states as to call a convention on the like application? There is no objection, however, against providing for a convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, etc., which in constitutional regulations ought to be as much as possible avoided

*. . . which in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, . . .*

<sup>1</sup> The provision for amendment under discussion at this time did not provide that amendments could be proposed by Congress

WILSON. It should be specified that ratification by two thirds of the states shall be necessary

SHERMAN The number of states necessary for ratification should be omitted, and it should be provided that no amendments shall be binding until consented to by the several states or by conventions thereof, leaving future conventions to act in this matter, like the present convention, according to circumstances

GERRY The words "or by conventions in three fourths thereof" should be struck out

*. . . provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article, and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.*

SHERMAN It should be provided also that no state shall, without its consent, be affected in its internal police

MADISON There should be no special provisos [as, no state shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate] Begin with these, and every state will insist on them for their boundaries, exports, etc.

## ARTICLE VI

*All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation*

MORRIS The assumption of the engagements of Congress might as well be omitted.

ELLSWORTH The provision is unnecessary. The United States heretofore entered into engagements by Congress who were their agents. They will hereafter be bound to fulfill them by their new agents.

SHERMAN It would be better to authorize the Legislature to assume the state debts, rather than to say positively it shall be done. The measure is just and it will have a good effect to say something about the matter.

LIVINGSTON FOR THE COMMITTEE OF ELEVEN It should be provided that the Legislature of the United States shall have power to fulfill the engagements which have been entered into by Congress, and to discharge, as well the debts of the United States, as the debts incurred by the several states during the late war for their common defense and general welfare.

BUTLER A positive statement that the engagements *shall* be fulfilled might compel payment, as well to the blood-suckers who have speculated on the distresses of others, as to those who have fought and bled for their country. A discrimination should be made between those classes of people.

MASON The use of a positive statement will beget speculations and increase the pestilent practice of stock-jobbing. There is a great distinction between original creditors and those who have purchased fraudulently of the ignorant and distressed. It is difficult to attempt to draw the line in this case but the attempt should not be precluded. Even fair purchasers at 4, 5, 6, 8 for 1, supposing them not to be blameable, do not stand on the same footing with the first holders. The interest they receive, even in paper, is equal to their purchase money. The door should be left open for buying up the securities, which will be precluded by the use of the word

*shall*, as requiring *nominal payment* The word *shall* might also extend to all the old continental paper.

GERRY State debts should not be assumed The states have made different degrees of exertion to sink their respective debts, those who have done most will be alarmed if they are now to be saddled with a share of the debts of states which have done least

SHERMAN It should be specified that all accounts of supplies furnished, services performed and monies advanced by the several states to the United States or by the United States to the several states, shall be adjusted by the rule of representation Unless some rule be expressly given, none will exist under the new system.

WILLIAMSON [Mr Sherman's motion was withdrawn in favor of the following ] It should be specified that by the rule of representation, the several quotas of the states shall be determined in settling the expenses of the late war.

ELLSWORTH Though the contracts of Congress will be binding, there will be no rule for executing them on the states, and one ought to be provided.

*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.*

HAMILTON We should establish a general and national government, completely sovereign, and annihilate the state distinctions and state operations The experience of others affords us the lesson that all federal governments are weak and distracted

RANDOLPH The national Legislature should have the power to negative all laws, passed by the several states, contravening, in the opinion of the national Legislature, the articles of Union or of any treaty subsisting under the authority of the Union.

**POCKNEY** A universality of the power of the national Legislature is indispensably necessary to render it effectual. The states must be kept in due subordination to the nation, and if the states are left to act of themselves in any case, it will be impossible to defend the national prerogatives. However extensive they may be on paper. Acts of [the Continental] Congress have been rendered in this manner, nor have foreign treaties escaped repeated violations. This universal negative is, in fact, the corner stone of an efficient national government. Consider the British government, the negative of the Crown is found beneficial, and the *states* are more one nation now than they were then. The national Legislature should have the power to negative all acts which they may judge improper.

**MASON** Experience has shown a constant tendency in the states to encroach on the federal authority, to violate national treaties, to infringe the rights and interests of each other, to oppress the weaker party without their respective consent. A negative is the mildest expedient that can be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrained, the only remedy will lie in an appeal to coercion. Can the national resources be exerted to the utmost to enforce a national decree against Massachusetts, or even perhaps by several of her neighbors? It will not be possible. Any government for the United States formed on the supposed principle of non-interference against the unconstitutional proceedings of the states will, in its operation, be as weak and fallacious as the government of [the Continental] Congress. The negative would render the use of force unnecessary. The states could of themselves then pass no operative act, nor could they be overruled by a legislature, where there are two branches, nor could they be overruled by the other. But in order to give the negative this effect, it must be applied to all cases. A discrimination would only be a source of contention between the two authorities. This prerogative on the part of the national Legislature is the great pervading principle that must control the actions of all the states, which without it will continually be in a state of anarchy and destroy the order and harmony of the union. It is a negative might be very properly lodged in the Senate, as it is the more permanent and expensive branch, and might not be subject to the same passions which will pass laws which will accomplish their purpose, and which can be repealed by the general Legislature or set aside by the national tribunals. Confidence cannot



be put in the state tribunals as guardians of the national authority and interests. In all the states these are more or less dependent on the legislatures. In Rhode Island the judges who refused to execute an unconstitutional law were displaced and others substituted by the Legislature who will be the willing instruments of the wicked and arbitrary plans of their masters. The utility of the negative is sufficiently displayed in the British system. Nothing could maintain the harmony and subordination of the various parts of the empire, but the prerogative by which the Crown stifles in the birth every act of every part tending to discord or encroachment. It is true that the prerogative is sometimes misapplied through ignorance or a partiality to one particular part of the empire, but we have not the same reason to fear such misapplications in our system. If the jurisdiction of the Supreme Court is the source of redress, this will be insufficient.

WILSON Federal liberty is to the states what civil liberty is to private individuals. And states are not more unwilling to purchase it by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of his personal sovereignty, which he enjoys in a state of nature. A definition of the cases in which the negative should be exercised is impracticable. A discretion must be left on one side or the other. Will it not be most safely lodged on the side of the national government? This is the keystone wanted to complete the wide arch of government we are raising. The firmness of judges is not of itself sufficient. It will be better to prevent the passage of an improper law, than to declare it void when passed. Unless this power is vested in the general government, the states will be employed by foreign powers against the Union. New states will soon be formed, the inhabitants may be foreigners, and possess foreign affections, and unless the general government can check the state laws, the nation may be involved in tumult and confusion.

DICKINSON We must take our choice of two things. We must either subject the states to the danger of being injured by the power of the national government, or the latter to the danger of being injured by that of the states. The danger is greater from the states. To leave the power doubtful will be opening another spring of discord, and as many of these should be shut as possible.

PINCKNEY It should be provided that the Legislature shall have power to negative state laws, provided two thirds of each house assent.

GERRY The proposed negative should extend only to paper money and similar measures

WILLIAMSON The Legislature ought to possess the power of negating such laws only as will encroach on the national government

SHERMAN The cases in which the negative ought to be exercised might be defined

HAMILTON It should be specified that all laws of the particular states contrary to the Constitution or laws of the United States shall be utterly void, and the better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government and shall have a negative upon the laws about to be passed in the state of which he is governor or president

WILSON The general government ought to have an opportunity of defending itself by having an appointment of some one constituent branch of the state governments

MADISON As to sending all laws up to the national Legislature, that might be rendered unnecessary by some emanation of the power into the states, so far, at least, as to give a temporary effect to laws of immediate necessity.

GERRY Instead of a negative, states passing unreasonable acts should be remonstrated with, and if this should not restrain them, force might be resorted to

RANDOLPH It should be specified that the national Legislature shall have power to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof <sup>1</sup>

PATERSON It should be specified that if any state or any body of men in any state shall oppose or prevent the carrying into execution acts or treaties of the national government, the federal Executive shall be authorized to call forth the power of the confederated states, or so much thereof as may be necessary, to enforce and compel an obedience to such acts or an observance of such treaties <sup>2</sup>

<sup>1</sup> This was in conjunction with the power to negative state laws

<sup>2</sup> This was in conjunction with a declaration that "All acts of the United States in Congress made by virtue and in pursuance of the powers hereby and by the Articles of Confederation vested in them, and all treaties made and ratified under

BEDFORD If a state does not obey the law of the new system, must not force be resorted to as the only ultimate remedy, in this as in any other system?

*The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States*

SHERMAN Oaths should not be required from the members of the state governments. This would unnecessarily intrude into the state jurisdictions. The stipulation that no religious test shall ever be required is unnecessary. The prevailing liberality is a sufficient security against such tests.

WILSON Oaths are a left-handed security only. A good government does not need them, and a bad one cannot or ought not to be supported. Oaths also might too much trammel the members of the government in case future alterations should be necessary, and prove an obstacle to the provision for amending the Constitution.

WILLIAMSON A reciprocal oath should be required from the national officers, to support the governments of the states.

[No clause covering the following subject matter is included in the Constitution.]

PINCKNEY It should be specified that the United States shall be forever considered as one body corporate and politic in law, and entitled to all the rights, privileges and immunities, which to bodies corporate do or ought to appertain.

the authority of the United States shall be the supreme law of the respective states, so far as those acts or treaties shall relate to the said states or their citizens, and the judiciary of the several states shall be bound thereby in their decisions, anything in the respective laws of the individual states to the contrary notwithstanding."

## ARTICLE VII

*The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.*

ELLSWORTH The Constitution should be referred to the legislatures of the states for ratification. More is to be expected from the legislatures than from the people. The prevailing wish of the people in the eastern states is to get rid of the public debt, and the idea of strengthening the national government carries with it that of strengthening the public debt. It is said that the legislatures have no authority in this case. A new set of ideas seems to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The fact is that we exist at present, and we need not enquire how, as a federal society, united by a charter, one article of which is that alterations therein may be made by the legislative authority of the states. If the plan goes forth to the people, several succeeding conventions within the states will be unavoidable. These conventions are better fitted to pull down than to build up constitutions.

GERRY A popular ratification is unnecessary, the Articles of Confederation providing for changes and alterations with the assent of [the Continental] Congress and ratification of the state legislatures. Both the state governments and the federal government have been too long acquiesced in to be now shaken. The Confederation is paramount to any state constitution. The last article of it, authorizing alterations, must consequently be so as well as the others, and everything done in pursuance of the article must have the same high authority with the article. Great confusion will result from a recurrence to the people. They will never agree on anything. There are no grounds for believing that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people. The people in the eastern states have at this time the wildest ideas of government in the world. They are for abolishing the Senate in

Massachusetts, and giving all the other powers of government to the other branch of the legislature.

MARTIN There is danger of commotions from a resort to the people and to first principles, in which the governments might be on one side and the people on the other

MORRIS The states should be left to pursue their own modes of ratification It will facilitate adoption of the plan to leave the modes approved by the several state constitutions to be followed

CARROLL The mode of altering the constitution of Maryland is pointed out therein, and no other mode can be pursued in that state

McHENRY The officers of government in Maryland are under oath to support the mode of alteration prescribed by the constitution.

HAMILTON Ratification could be by the people at large It may be said that the states cannot ratify a plan not within the purview of the Article of Confederation providing for alterations and amendments But may not the states themselves, in which no constitutional authority equal to this purpose exist in the legislatures, have had in view this other method? In the senate of New York a proviso was moved that no act of the convention should be binding until it should be referred to the people and ratified, and the motion was lost by a single voice only, the reason assigned against it being, that it might possibly be found an inconvenient shackle

RANDOLPH The plan should go from [the Continental] Congress to the state legislatures and from these to state conventions having power to adopt, reject or amend, the process to close with another general convention with full power to adopt or reject the alterations proposed by the state conventions and to establish finally the government

MASON This constitution has been formed without the knowledge or idea of the people A second convention will know more of the sense of the people and be able to provide a system more consonant to it It is improper to say to the people, take this or nothing

MORRIS The Constitution should be referred to one general convention, chosen and authorized by the people to consider, *amend* and establish the same.

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that ratification shall be by conventions chosen under the recommendation of the state legislatures <sup>1</sup>

**MORRIS** It should be specified that the several legislatures ought to provide for the calling conventions within their respective states as speedily as circumstances will permit. The object is to impress in stronger terms the necessity of calling conventions, in order to prevent enemies to the plan from giving it the go by. When it first appears, with the sanction of this convention, the people will be favorable to it. By degrees the state officers and those interested in the state governments will intrigue and turn the popular current against it.

**CARROLL** It should be specified that the ratification of the thirteen states is necessary. Unanimity is necessary to dissolve the existing Confederation, which has been unanimously established.

**GERRY** To dissolve in so slight a manner the solemn obligations of the Articles of Confederation indicates indecency and a pernicious tendency. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

**SUMNER** Ratification of it by ten states should be necessary since the states are now confederated by articles which require unanimity in changes.

**WILSON** Eight states should be required for ratification.

**WILSON** Seven states should be specified as the number necessary for ratification. This is a majority of the whole number and sufficient for the commencement of the plan. A plurality of the states should be sufficient for the union.

**MADISON** It should be specified that the conventions of seven or more states, combined to at least thirty-three members in the House of Representatives, according to the allotment made in [Sec. 3, Art. I] shall be

<sup>1</sup> This proposal was included in the resolution accompanying the Constitution, Sept. 22.

sufficient for ratification This will require the concurrence of a majority both of the states and the people

MORRIS The blank specifying the number of states necessary for ratification should be filled in a two-fold way, so as to provide for the event of the ratifying states being contiguous, which would render a smaller number sufficient, and the event of their being dispersed, which would require a greater number for the introduction of the government

HAMILTON It should be recommended that each state legislature shall declare that if the convention of the state shall think the plan ought to take effect among nine ratifying states, the same shall take effect accordingly It is wrong to allow nine states, as provided, to institute a new government on the ruins of the existing one No convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine states This mode is less exceptionable than the one proposed, while it will attain the same end

SHERMAN The requirement of nine states should be made a separate act, and in some such form as that intimated by Col Hamilton, instead of being made a particular article of the Constitution

RUTLEDGE FOR THE COMMITTEE OF DETAIL It should be specified that "this Constitution shall be laid before the United States in Congress assembled, for their approbation, and it is the opinion of this convention, that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature" <sup>1</sup>

GERRY This clause should be retained It is improper to change the government without the approbation of Congress, and will give just umbrage to that body It is objectionable, also, to annul the Confederation with so little scruple or formality

MORRIS The words "for their approbation" should be struck out [and the remainder retained in the Constitution]

<sup>1</sup> The Constitution was, of course, submitted to (the Continental) Congress The resolution accompanying the Constitution read, in part, "Resolved, that the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the Recommendation of its Legislature . "

**RUTLEDGE FOR THE COMMITTEE OF DETAIL** It should be specified that, in the opinion of this convention, each assenting convention should notify its assent and ratification to the United States in Congress assembled, that Congress after receiving the assent and ratification of the conventions of the necessary number of states, should appoint and publish a day, as early as may be, and appoint a place for commencing proceedings under this Constitution, that after such publication, the legislatures of the several states should elect members of the Senate and direct the election of members of the House of Representatives, and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution <sup>4</sup>

*Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth In witness whereof we have hereunto subscribed our names* <sup>4</sup>

Attest WILLIAM JACKSON,  
Secretary

Delaware

GEO READ  
GUNNING BEDFORD JUN  
JOHN DICKINSON  
RICHARD BASSETT  
JACO BROOM

GO WASHINGTON—Presidt and  
Deputy from Virginia

New Hampshire

JOHN LANGDON  
NICHOLAS GILMAN

Massachusetts

NATHANIEL GORHAM  
RUFUS KING

<sup>3</sup> Instead, the accompanying resolution recommended that state conventions notify (the Continental) Congress of ratification, and that election of a President (by electors) and of members of the Senate and House of Representatives, and the convening of the Senate and House, be arranged by (the Continental) Congress

<sup>4</sup> Fifty-five delegates attended the Convention, but only forty-one remained until the work of the Convention was finished. Three of those remaining, Mason and Randolph of Virginia and Gerry of Massachusetts, refused to sign the Constitution. Dickinson of Delaware, who was absent, requested his colleague, George Read of Delaware, to sign for him. Hamilton, who signed for New York, refrained from voting on the final passage of the Constitution, since he, alone, could not represent his state.



<i>Maryland</i>	<i>Connecticut</i>
JAMES MCHENRY	WM SAML. JOHNSON
DAN OF ST. THOS JENIFER	ROGER SHERMAN
DANL CARROLL	<i>New York</i>
<i>Virginia</i>	ALEXANDER HAMILTON
JOHN BLAIR—	<i>New Jersey</i>
JAMES MADISON JR.	WIL LIVINGSTON
<i>North Carolina</i>	DAVID BREARLEY
WM BLOUNT	WM. PATERSON
RICHD. DOBBS SPAIGHT	JONA DAYTON
HU WILLIAMSON	<i>Pennsylvania</i>
<i>South Carolina</i>	B FRANKLIN
J RUTLEDGE	THOMAS MIFFLIN
CHARLES COTESWORTH PINCK-	ROBT. MORRIS
NEY	GEO. CLYMER
CHARLES PINCKNEY	THOS FITZSIMONS
PIERCE BUTLER	JARED INGERSOLL
<i>Georgia</i>	JAMES WILSON
WILLIAM FEW	GOUV MORRIS
ABR BALDWIN	

GENERAL PINCKNEY The form of signing should be changed <sup>5</sup> We are not likely to gain many converts by the ambiguity of the proposed form. It is best to be candid and let the form speak the substance. If the meaning of the signers be left in doubt, the purpose will not be answered.

WILLIAMSON The signing should be confined to the letter to [the Continental] Congress, accompanying the Constitution, which might perhaps do nearly as well and would be found as satisfactory to some members \* who dislike the Constitution. As for myself, I do not think a better plan is to be expected, and have no scruples against putting my name to it.

\* "He alluded to Mr Blount for one" [Footnote by Madison]

<sup>5</sup> This mode was to enable members of the Convention to avoid signing in such a way as to indicate their approval of everything in the Constitution. Instead, the signatures attested the fact that the Constitution was accepted unanimously by the states present in the Convention.

## **APPENDICES**



## APPENDIX A

### WHAT THE AUTHORS OF THE CONSTITUTION THOUGHT ABOUT THE POWER OF THE COURTS TO DECLARE LAWS UNCONSTITUTIONAL AS EXPRESSED IN THE CONSTITUTIONAL CONVENTION

[The following group of arguments is concerned with inclusion of the Justices of the Supreme Court in a council of revision, whose duty would be to pass upon all laws before they became operative. This is a legislative function. Some of the arguments below are in favor of this and some are against it, but all recognize the judicial power of the courts to determine upon the constitutionality of laws when the questions are presented to them in bona fide cases in law and equity.]

#### PIERCE'S NOTES

Mr. KING was of opinion that the Judicial ought not to join in the negative of a Law, because the Judges will have the expounding of those Laws when they come before them, and they will no doubt stop the operation of such as shall appear repugnant to the constitution.

#### MADISON'S NOTES FOR JUNE 4

Mr. GERRY doubts whether the Judiciary ought to form a part of it [council of revision] as they will have a sufficient check against encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. In some States the Judges had actually set aside laws as being against the Constitution. This was done too with general approbation. It was quite foreign from the nature of the office to make them judges of the policy of public measures. He moves to postpone the clause.

Mr. KING seconds the motion, observing that the Judges ought to be

able to expound the law as it should come before them, free from the bias of having participated in its formation.

#### MADISON'S NOTES FOR JULY 21

Mr WILSON . It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights There was weight in this observation, but this power of the Judges did not go far enough Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature

Mr MADISON considered the object of the motion as of great importance to the meditated Constitution It would be useful to the Judiciary department by giving it an additional opportunity of defending itself against Legislative encroachments It would moreover be useful to the Community at large as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities

Mr STRONG thought with Mr Gerry that the power of making ought to be kept distinct from that of expounding, the laws No maxim was better established The Judges in exercising the function of expositors might be influenced by the part they had taken in passing the laws

Mr. L. MARTIN And as to the Constitutionality of laws, that point will come before the Judges in their official character In this character they have a negative on the laws *Join them with the Executive in the Revision and they will have a double negative* .

Col MASON It had been said (by Mr L Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have *one negative* He would reply that in this capacity they could *unpede* in one case only, the operation of laws They could declare an unconstitutional law void But with regard to every law however unjust oppressive or pernicious, that did not come plainly under this description, they would be under the necessity as Judges to give it a free course He wished the further use to be made of the Judges, of giving aid in preventing every

improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences .

Mr. GHORUM [Gorham]. . . But there are two objections against admitting the Judges to share in it [council of revision] which no observations on the other side seem to obviate The 1st is that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them . . .

Mr. WILSON To the 1st objection stated by the other Gentleman it might be answered that supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the expedient .

Mr. RUTLEDGE thought the Judges of all men the most unfit to be concerned in the revisionary Council The Judges ought never to give their opinion on a law till it comes before them He thought it equally unnecessary.

#### MADISON'S NOTES FOR AUGUST 15

Mr PINCKNEY opposed the interference of the Judges in the Legislative business it will involve them in parties and give a previous tincture to their opinions .

Mr GOVR MORRIS could not agree [see Mercer and Dickinson, page 152] that the Judiciary which was part of the Executive should be bound to say that a direct violation of the Constitution was law.

[The following group of arguments is concerned with a provision that Congress have power to pass upon the laws of the state legislatures Some of the arguments below are in favor of this and some are against it, but in all of them is a recognition of the power of the courts to determine upon the constitutionality of laws when the questions are presented to them in bona fide cases in law and equity.]

#### MADISON'S NOTES FOR JULY 17

The next clause "To negative all laws passed by the several States contravening in the opinion of the Nat Legislature the articles of Union, or any treaties subsisting under the authority of the Union "

Mr SHERMAN thought it unnecessary, as the Courts of the States would not consider as valid any law contravening the Authority of the Union, and which the legislature would wish to be negatived

Mr MADISON . . Confidence can not be put in the State Tribunals as guardians of the National authority and interests In all the States they are more or less dependent on the Legislatures In Georgia they are appointed annually by the Legislature In R. Island the Judges who refused to execute an unconstitutional law were displaced, and others substituted, by the Legislature who would be the willing instruments of the wicked and arbitrary plans of their masters

Mr. GOV. MORRIS was more and more opposed to the negative The proposal of it would disgust all the States A law that ought to be negatived will be set aside in the Judiciary department and if that security should fail, may be repealed by a National law

Mr SHERMAN Such a power involves a wrong principle, to wit, that a law of a State contrary to the articles of the Union, would if not negatived, be valid & operative

#### MADISON'S NOTES FOR AUGUST 23

Mr WILSON . The power of self-defence had been urged as necessary for the State Governments It was equally necessary for the General Government The firmness of Judges is not of itself sufficient Something further is requisite It will be better to prevent the passage of an improper law, than to declare it void when passed

[The following groups of arguments are concerned respectively with ratification of the Constitution, the clause prohibiting states from passing any law impairing the obligation of contracts, and the clause stipulating that no state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws]

#### MADISON'S NOTES FOR JULY 23

Mr GOV. MORRIS If the Confederation is to be pursued no alteration can be made without the unanimous consent of the Legislatures Legislative alterations not conformable to the federal compact, would

clearly not be valid. The Judges would consider them as null & void . . .

Mr MADISON thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions, and it would be a novel & dangerous doctrine that a Legislature could change the constitution under which it held its existence.

He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league or treaty*, and a *Constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation* there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a pre-existing law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as null & void.

#### MADISON'S NOTES FOR AUGUST 28

Mr WILSON. The answer to these objections is that retrospective interferences only are to be prohibited.

Mr MADISON. Is not that already done by the prohibition of ex post facto laws, which will oblige the Judges to declare such interferences null & void?

#### MADISON'S NOTES FOR SEPTEMBER 12

Mr GORHAM & Mr LANGDON. How was redress to be obtained in case [State] duties should be laid beyond the purpose expressed?

Mr MADISON. There will be the same security as in other cases. The jurisdiction of the supreme Court must be the source of redress. So far only had provision been made by the plan against injurious acts of the States. His own opinion was, that this was insufficient. A negative on the State laws alone could meet all the shapes which these could assume. But this had been overruled.

[The following arguments are concerned with inclusion of the Justices of the Supreme Court in a council of revision, in a legislative capacity. Mr Meier is in favor of this, but he and Mr Dickinson disapprove of the judicial power of the courts to determine upon the



constitutionality of laws when the questions are presented to them in bona fide cases in law and equity.]

MADISON'S NOTES FOR AUGUST 15

Mr MERCER heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable . .

Mr DICKENSON was strongly impressed with the remark of Mr Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Arragon he observed became by degrees, the lawgiver.

## APPENDIX B

### WHAT THE AUTHORS OF THE CONSTITUTION THOUGHT ABOUT A LIMITATION ON THE NUMBER OF TERMS FOR THE PRESIDENT AS EXPRESSED IN THE CONSTITUTIONAL CONVENTION

[Argument in favor of a constitutional limitation on eligibility for re-election appears under Article II, Section 1 (pages 87 and 88) and is not repeated here. The proposals favoring ineligibility for re-election all concerned a second term and the arguments below oppose these.]

#### MADISON'S NOTES FOR JUNE 1

Mr SHERMAN was for [a term of] three years, and against the doctrine of rotation as throwing out of office the men best qualified to execute its duties.

#### MADISON'S NOTES FOR JULY 17

"To be ineligible a second time"—Mr HOUSTON moved to strike out this clause .

Mr GOVR MORRIS espoused the motion. The ineligibility proposed by the clause as it stood tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment. It was saying to [the President] make hay while the sun shines.

#### MADISON'S NOTES FOR JULY 19

Mr GOVR MORRIS . He finds too that the Executive is not to be re-eligible. What effect will this have? First it will destroy the great incentive to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword. Second, it will tempt him to make

the most of the short space of time allotted him, to accumulate wealth and provide for his friends Third, it will produce violations of the very constitution it is meant to secure In moments of pressing danger the tried abilities and established character of a favorite Magistrate will prevail over respect for the forms of the Constitution It might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place

Mr KING did not like the ineligibility He thought there was great force in the remarks of Mr Sherman that he who has proved himself most fit for an Office, ought not to be excluded by the constitution from holding it He would therefore prefer any other reasonable plan that could be substituted He was much disposed to think that in such cases the people at large would chuse wisely

#### MADISON'S NOTES FOR JULY 24

MR GERRY If the motion [election of the President by Congress] should be agreed to, it will be necessary to make the Executive ineligible a second time, in order to render him independent of the Legislature, which was an idea extremely repugnant to his way of thinking

MR ELSEWORTH [Ellsworth] The Executive he thought should be reelected if his conduct proved him worthy of it And he will be more likely to render himself, worthy of it if he be rewardable with it The most eminent characters also will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixt period .

Mr KING was for making him re-eligible This is too great an advantage to be given up for the small effect it will have on his dependence, if impeachments are to lie He considered these as rendering the tenure during pleasure .

MR WILSON He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behaviour It seemed to be supposed that at a certain advance in life, a continuance in office would cease to be agreeable to the officer, as well as desirable to the public Experience had shown in a variety of instances that both a capacity & inclination for public service existed—in very advanced stages He mentioned the instance of a Doge of Venice who was elected after he was 80 years of age The popes have generally

been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at 35 years of age, which he presumes may happen & his continuance should be fixt at 15 years, at the age of 50 in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British Jurisprudence have sustained had the age of 50 been fixt there as the ultimate limit of capacity or readiness to serve the public. The great luminary [Ld Mansfield] held his seat for thirty years after his arrival at that age.

Mr GOVR MORRIS      In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineligible a second time had been devised. This was as much as to say we should give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a second time—and prolong his duration even to 15 years, will he by any wonderful interposition of providence at that period cease to be a man? No, he will be unwilling to quit his exaltation, the road to his object through the Constitution will be shut, he will be in possession of the sword, a civil war will ensue, and the Commander of the victorious army on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system be curable. It is the most difficult of all rightly to balance the Executive. Make him too weak the Legislature will usurp his powers. Make him too strong. He will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election.

#### MADISON'S NOTES FOR JULY 25

Mr GOVR MORRIS was against a rotation in every case. It formed a political School, in which we were always governed by the scholars, and not by the Masters. The evils to be guarded against in this case are, first the undue influence of the Legislature [which was to elect the President], second, instability of Councils, third, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the

State of Penna. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Second, the Rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man, formed by his benevolent author no doubt for wise ends, that although he knows his existence to be limited to a span, he takes his measures as if he were to live for ever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part, and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend.

#### MADISON'S NOTES FOR JULY 26

Mr GOV MORRIS. In answer to Col Mason's position that a periodical return of the great officers of the State into the mass of the people, was the palladium of Civil liberty, he would observe that on the same principle the Judiciary ought to be periodically degraded, certain it was that the Legislature ought on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible.<sup>1</sup> In answer to Docr Franklin, that a return into the mass of the people would be a promotion, instead of a degradation, he had no doubt that our Executive like most others would have too much patriotism to shrink from the burden of his office, and too much modesty not to be willing to decline this promotion.

#### MCHENRY'S NOTES FOR AUGUST 24

On what respects [the Executive's] ineligibility, Gov MORRIS observed That in the strength of the Executive would be found the strength of America. Ineligibility operates to weaken or destroy the constitution. The president will have no interest beyond his period of service. He will for peace and emolument to himself and friends agree to acts that will in-

<sup>1</sup> See Randolph, p 50

crease the power and agrandize the bodies which elect him The legislature will swallow up the whole powers of the constitution, but to do this effectually they must possess the Executive This will lead them to tempt him, and the shortness of his reign will subject him to be tempted and overcome The legislature has great and various appointments in their power. This will create them an extensive influence which may be so used as to put at ought of the power of the Executive to prevent them from arriving at supremacy On the other hand give the Executive a chance of being re-chosen and he will hold his prerogatives with all possible tenaciousness

## APPENDIX C

### CHARACTER SKETCHES OF DELEGATES TO THE CONSTITUTIONAL CONVENTION

BY MAJOR WILLIAM PIERCE OF GEORGIA

*[Asterisks denote signers of the Constitution]*

\*BALDWIN, ABRAHAM (1754-1807), Georgia

Mr Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence Having laid the foundation of a compleat classical education at Harvard College, he pursues every other study with ease He is well acquainted with Books and Characters and has an accommodating turn of mind, which enables him to gain the confidence of Men, and to understand them He is a practising Attorney in Georgia, and has been twice a Member of Congress Mr Baldwin is about 38 years of age

\*BASSETT, RICHARD (1745-1815), Delaware

Mr Bassett is a religious enthusiast, lately turned Methodist, and serves his Country because it is the will of the people that he should do so He is a Man of plain sense, and has modesty enough to hold his Tongue He is a Gentlemanly Man, and is in high estimation among the Methodists Mr Bassett is about 36 years old

\*BEDFORD, GUNNING, JR (1747-1812), Delaware

Mr Bedford was educated for the Bar, and in his profession I am told, has merit He is a bold and nervous Speaker, and has a very commanding and striking manner,—but he is warm and impetuous in his temper, and precipitate in his judgment Mr Bedford is about 32 years old, and very corpulent

\*BLAIR, JOHN (1732-1800), Virginia

Mr Blair is one of the most respectable Men in Virginia, both on account of his Family as well as fortune He is one of the Judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge

of the Laws Mr Blair is however, no Orator, but his good sense, and most excellent principles, compensate for other deficiencies He is about 50 years of age

**\*BLOUNT, WILLIAM (1749-1800), North Carolina**

Mr Blount is a character strongly marked for integrity and honor He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness He is no Speaker, nor does he possess any of those talents that make Men shine,—he is plain, honest, and sincere Mr Blount is about 36 years of age

**\*BREARLEY, DAVID (1745-90), New Jersey**

Mr Brearly is a man of good, rather than of brilliant parts He is a Judge of the Supreme Court of New Jersey, and is very much in the esteem of the people As an Orator he has little to boast of, but as a Man he has every virtue to recommend him Mr Brearley is about 40 years of age.

**\*BROOM, JACOB (1752-1810), Delaware**

Mr Broom is a plain good Man, with some abilities, but nothing to render him conspicuous He is silent in public, but chearful and conversable in private. He is about 35 years old

**\*BUTLER, PIERCE (1744-1822), South Carolina**

Mr Butler is a character much respected for the many excellent virtues which he possesses But as a politician or an Orator, he has no pretensions to either He is a Gentleman of fortune, and takes rank among the first in South Carolina He has been appointed to Congress, and is now a Member of the Legislature of South Carolina Mr Butler is about 40 years of age, an Irishman by birth

**\*CARROLL, DANIEL (1730-96), Maryland**

Mr Carrol is a Man of large fortune, and influence in his State He possesses plain good sense, and is in the full confidence of his Countrymen This Gentleman is about [?] years of age

**\*CLYMER, GEORGE (1739-1813), Pennsylvania**

Mr Clymer is a lawyer of some abilities,—he is a respectable Man, and much esteemed Mr Clymer is about 40 years old



DAYIE, WILLIAM R (1756-1820), North Carolina

Mr Davey is a Lawyer of some eminence in his State. He is said to have a good classical education, and is a Gentleman of considerable literary talents. He was silent in the Convention, but his opinion was always respected. Mr Davy is about 30 years of age.

\*DAYTON, JONATHAN (1760-1824), New Jersey

Capt Dayton is a young Gentleman of talents, with ambition to exert them. He possesses a good education and some reading, he speaks well, and seems desirous of improving himself in Oratory. There is an impetuosity in his temper that is injurious to him, but there is an honest rectitude about him that makes him a valuable Member of Society, and secures to him the esteem of all good Men. He is about 30 years old, served with me as a Brother Aid to General Sullivan in the Western expedition of '79.

\*DICKINSON, JOHN (1732-1808), Delaware

Mr Dickinson has been famed through all America, for his Farmers Letters, he is a Scholar, and said to be a Man of very extensive information. When I saw him in the Convention I was induced to pay the greatest attention to him whenever he spoke. I had often heard that he was a great Orator, but I found him an indifferent Speaker. With an affected air of wisdom he labors to produce a trifle,—his language is irregular and incorrect,—his flourishes, (for he sometimes attempts them), are like expiring flames, they just shew themselves and go out,—no traces of them are left on the mind to cheer or animate it. He is, however, a good writer and will be ever considered one of the most important characters in the United States. He is about 55 years old, and was bred a Quaker.

ELLSWORTH, OLIVER (1745-1807), Connecticut

Mr Elsworth is a Judge of the Supreme Court in Connecticut,—he is a Gentleman of a clear, deep, and copious understanding, eloquent, and connected in public debate, and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. Mr Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities.

**\*FEW, WILLIAM (1748-1828), Georgia**

Mr. Few possesses a strong natural Genius, and from application has acquired some knowledge of legal matters,—he practises at the bar of Georgia, and speaks tolerably well in the Legislature. He has been twice a Member of Congress, and served in that capacity with fidelity to his State, and honor to himself. Mr. Few is about 35 years of age.

**\*FITZSIMONS, THOMAS (1741-1811), Pennsylvania**

Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old.

**\*FRANKLIN, BENJAMIN (1706-90), Pennsylvania**

Dr. Franklin is well known to be the greatest philosopher of the present age,—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their Lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age.

**GERRY, ELBRIDGE (1744-1814), Massachusetts**

Mr. Gerry's character is marked for integrity and perseverance. He is a hesitating and laborious speaker,—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country. Mr. Gerry is very much of a Gentleman in his principles and manners,—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age.

**\*GILMAN, NICHOLAS (1755-1814), New Hampshire**

Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the Man —about 30 years of age.

**\*GORHAM, NATHANIEL (1738-96), Massachusetts**

Mr Gorham is a Merchant in Boston, high in reputation, and much in the esteem of his Country-men He is a Man of very good sense, but not much improved in his education He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style,—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no Man is more perspicuous and full He has been President of Congress, and three years a Member of that Body Mr Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner

**\*HAMILTON, ALEXANDER (1757-1804), New York**

Col Hamilton is deservedly celebrated for his talents He is a practitioner of the Law, and reputed to be a finished Scholar To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him Yet there is something too feeble in his voice to be equal to the strain of oratory,—it is my opinion that he is rather a convincing Speaker, than a blazing Orator Col Hamilton requires time to think,—he enquires into every part of his subject with the searchings of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on—His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention He is about 33 years old, of small stature, and lean His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable

**HOUSTON, WILLIAM C. (1746-88), New Jersey**

[Omitted by Pierce from character sketches]

**HOUSTOUN, WILLIAM, Georgia**

Mr Houstoun is an Attorney at Law, and has been Member of Congress for the State of Georgia He is a Gentleman of Family, and was educated in England As to his legal or political knowledge, he has very little to boast of Nature seems to have done more for his corporeal than mental

powers His Person is striking, but his mind very little improved with useful or elegant knowledge He has none of the talents requisite for the Orator, but in public debate is confused and irregular Mr Houstoun is about 30 years of age of an amiable and sweet temper, and of good and honorable principles

\*INGERSOLL, JARED (1749-1822), Pennsylvania

Mr Ingersol is a very able Attorney, and possesses a clear legal understanding He is well educated in the Classic's, and is a Man of very extensive reading Mr Ingersol speaks well, and comprehends his subject fully There is a modesty in his character that keeps him back He is about 36 years old

\*JENIFER, DANIEL OF ST THOMAS (1723-90), Maryland

Mr. Jenifer is a Gentleman of fortune in Maryland,—he is always in good humour, and never fails to make his company pleased with him He sits silent in the Senate, and seems to be conscious that he is no politician From his long continuance in single life, no doubt but he has made the vow of celibacy He speaks warmly of the Ladies notwithstanding Mr Jenifer is about 55 years of Age, and once served as an Aid de Camp to Major Genl Lee

\*JOHNSON, WILLIAM SAMUEL (1727-1819), Connecticut

Dr. Johnson is a character much celebrated for his legal knowledge, he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding

As an Orator in my opinion, there is nothing in him that warrants the high reputation which he has for public speaking There is something in the tone of his voice not pleasing to the Ear,—but he is eloquent and clear,—always abounding with information and instruction He was once employed as an Agent for the State of Connecticut to state her claims to certain landed territory before the British House of Commons, this Office he discharged with so much dignity, and made such an ingenious display of his powers, that he laid the foundation of a reputation which will probably last much longer than his own life Dr Johnson is about sixty years of age, possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance

## \*KING, RUFUS (1755-1827), Massachusetts

Mr King is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty-three years of age, about five feet ten Inches high, well formed, an handsome face, with a strong expressive Eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the Luminaries of the present Age.

## \*LANGDON, JOHN (1741-1819), New Hampshire

Mr Langdon is a Man of considerable fortune, possesses a liberal mind, and a good plain understanding — about 40 years old.

## LANSING, JOHN, JR (1754-1829), New York

Mr Lansing is a practicing Attorney at Albany, and Mayor of that Corporation. He has a hesitation in his speech, that will prevent his being an Orator of any eminence, — his legal knowledge I am told is not extensive, nor his education a good one. He is however a Man of good sense, plain in his manners, and sincere in his friendships. He is about 32 years of age.

## \*LIVINGSTON, WILLIAM (1723-90), New Jersey

Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satire and a neatness of style. But he is no Orator, and seems little acquainted with the gulfs of policy. He is about 60 years old, and remarkably healthy.

## McCLURG, JAMES (1746-1823), Virginia

Mr McClurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain

that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown The Doctor is about 38 years of age, a Gentleman of great respectability, and of a fair and unblemished character

**\*MCHENRY, JAMES (1753-1816), Maryland**

Mr McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Genl Washington and the Marquis de la Fayette He is a Man of specious talents, with nothing of genius to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator He is however, a very respectable young Gentleman, and deserves the honor which his Country has bestowed on him Mr McHenry is about 32 years of age

**\*MADISON, JAMES, JR (1751-1836), Virginia**

Mr Maddison is a character who has long been in public life, and what is very remarkable every Person seems to acknowledge his greatness He blends together the profound politician, with the Scholar In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate The affairs of the United States, he perhaps, has the most correct knowledge of, of any Man in the Union He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council. Mr Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation

**MARTIN, ALEXANDER (1740-1807), North Carolina**

Mr Martin was lately Governor of North Carolina, which office he filled with credit He is a Man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no Speaker Mr Martin was once a Colonel in the American Army, but proved unfit for the field. He is about 40 years of age

**MARTIN, LUTHER (1748-1826), Maryland**

Mr. Martin was educated for the Bar, and is Attorney general for the

**State of Maryland** This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him He is about 34 years of age.

**MASON, GEORGE (1726-92), Virginia**

Mr. Mason is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America Mr Mason is about 60 years old, with a fine strong constitution

**MERCER, JOHN FRANCIS (1759-1821), Maryland**  
[Omitted by Pierce from character sketches]

**\*MIFFLIN, THOMAS (1744-1800), Pennsylvania**

General Mifflin is well known for the activity of his mind, and the brilliancy of his parts He is well informed and a graceful Speaker The General is about 40 years of age, and a very handsome man

**\*MORRIS, GOUVERNEUR (1752-1816), Pennsylvania**

Mr. Gouverneur Morris is one of those Genius's in whom every species of talents combine to render him conspicuous and flourishing in public debate—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him With an infinite stretch of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing But with all these powers he is fickle and inconstant, never pursuing one train of thinking, nor ever regular He has gone through a very extensive course of reading, and is acquainted with all the sciences No Man has more wit,—nor can any one engage the attention more than Mr. Morris He was bred to the Law, but I am told he disliked the profession, and turned Merchant He is engaged in some great mercantile matters with his namesake Mr Robt Morris This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth

**\*MORRIS, ROBERT (1734-1806), Pennsylvania**

Robert Morris is a merchant of great eminence and wealth, an able Fin-

ancier, and a worthy Patriot. He has an understanding equal to any public object, and possesses an energy of mind that few Men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not Speaking in the Convention I know not,—but he never once spoke on any point.<sup>1</sup> This Gentleman is about 50 years old.

\*PATERSON, WILLIAM (1745–1806), New Jersey

Mr. Patterson is one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator,—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This Gentleman is about 34 yrs. of age, of a very low stature.

PIERCE, WILLIAM (1740–89), Georgia

My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety, and my services in Congress and the Convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, *that gave me a seat in the worst Council in the World*, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it.

\*PINCKNEY, CHARLES (1757–1824), South Carolina

Mr. Charles Pinckney is a young Gentleman of the most promising talents. He is, altho' only 24 yrs. of age, in possession of a very great variety of knowledge. Government, Law, History and Philosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most men.

<sup>1</sup> Mr. Morris, however, made the motion proposing Washington as president of the Convention.



He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a member of Congress, and served in that Body with ability and eclat.

**\*PINCKNEY, (GENERAL) CHARLES COTESWORTH (1746-1825),** South Carolina

Mr. Chs. Cotesworth Pinckney is a Gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well,—but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American Army, and served with great reputation through the War. He is now about 40 years of age.

**RANDOLPH, EDMUND (1753-1813),** Virginia

Mr. Randolph is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the Statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners.

*Mr. Randolph is about 32 years of age.*

**\*READ, GEORGE (1733-98),** Delaware

Mr. Read is a Lawyer and a Judge,—his legal abilities are said to be very great, but his powers of Oratory are fatiguing and tiresome to the last degree,—his voice is feeble, and his articulation so bad that few can have patience to attend to him. He is a very good Man, and bears an amiable character with those who know him. Mr. Read is about 50, of a low stature, and a weak constitution.

**\*RUTLEDGE, JOHN (1739-1800),** South Carolina

Mr. Rutledge is one of those characters who was highly mounted at the commencement of the late revolution,—his reputation in the first Congress gave him a distinguished rank among the American Worthies. He was bred to the Law, and now acts as one of the Chancellors of South Carolina. This Gentleman is much famed in his own State as an Orator, but in my opinion he is too rapid in his public speaking to be denominated an agreeable Orator. He is undoubtedly a man of abilities, and a Gentle-

man of distinction and fortune Mr Rutledge was once Governor of South Carolina He is about 48 years of age

**\*SHERMAN, ROGER (1721-93), Connecticut**

Mr Sherman exhibits the oddest shaped character I ever remember to have met with He is awkward, un-meaning, and unaccountably strange in his manner But in his train of thinking there is something regular, deep, and comprehensive, yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant, which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable,—and yet he deserves infinite praise,—*no Man has a better Heart or a clearer Head.* If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object,—it is remarked that he seldom fails. I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions In the early part of his life he was a Shoe-maker,—but despising the lowness of his condition, he turned Almanack maker, and so progressed upwards to a Judge He has been several years a Member of Congress, and discharged the duties of his Office with honor and credit to himself, and advantage to the State he represented. He is about 60.

**\*SPAIGHT, RICHARD DOBBS (1758-1802), North Carolina**

Mr. Spaight is a worthy Man, of some abilities, and fortune Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. *He is about 31 years of age.*

**STRONG, CALEB (1745-1819), Massachusetts**

Mr. Strong is a Lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a Speaker he is feeble, and without confidence. This Gentleman is about thirty-five years of age, and greatly in the esteem of his Colleagues.

**\*WASHINGTON, GEORGE (1732-99), Virginia**

Gen'l Washington is well known as the Commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa, he may be said to be the deliverer of

his Country,—like Peter the great he appears as the politician and the States-man, and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the Confederacy,—and now only seeks for the approbation of his Countrymen by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52d year of his age.

**\*WILLIAMSON, HUGH (1735–1819), North Carolina**

Mr. Williamson is a Gentleman of education and talents. He enters freely into public debate from his close attention to most subjects, but he is no Orator. There is a great degree of good humour and pleasantness in his character, and in his manners there is a strong trait of the Gentleman. He is about 48 years of age.

**\*WILSON, JAMES (1742–98), Pennsylvania**

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old.

**WYTHE, GEORGE (1726–1806), Virginia**

Mr. Wythe is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a complete knowledge of the dead languages and all the sciences. He is remarked for his exemplary life, and universally esteemed for his good principles. No Man it is said understands the history of Government better than Mr. Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is

a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age

YATES, ROBERT (1738-1801), New York

Mr Yates is said to be an able Judge. He is a Man of great legal abilities, but not distinguished as an Orator. Some of his Enemies say he is an anti-federal Man, but I discovered no such disposition in him. He is about 45 years old, and enjoys a great share of health

## APPENDIX D

### THE CONSTITUTION OF THE UNITED STATES OF AMERICA

WE THE PEOPLE of the United States in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America

#### ARTICLE I

*Section 1.* All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

*Section 2.* The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made, the State of New Hampshire shall be entitled

to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment

*Section 3* The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year, and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen

The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation When the President of the United States is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office

of honor, trust, or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law

*Section 4* The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

*Section 5* Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting

*Section 6* The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, and for any speech or debate in either House they shall not be questioned in any other place

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office

under the United States shall be a member of either House during his continuance in office.

*Section 7* All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States, if he approve he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

*Section 8* The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States,

To borrow money on the credit of the United States,

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes,

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States,



To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures,

To provide for the punishment of counterfeiting the securities and current coin of the United States,

To establish post offices and post roads,

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,

To constitute tribunals inferior to the Supreme Court,

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations,

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water,

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years,

To provide and maintain a navy,

To make rules for the government and regulation of the land and naval forces,

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions,

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress,

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings,—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

*Section 9* The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it

No bill of attainder or *ex post facto* law shall be passed

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken

No tax or duty shall be laid on articles exported from any State

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels, bound to or from one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time

No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state

*Section 10* No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any

*agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay*

## ARTICLE II

*Section 1.* The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote, a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the Electors, and

the day on which they shall give their votes, which day shall be the same throughout the United States

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them

Before he enter on the execution of his office, he shall take the following oath or affirmation "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States"

*Section 2* The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States, he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law, but the Congress may by law vest the ap-

pointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

*Section 3* He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient, he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, he shall receive ambassadors and other public ministers, he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

*Section 4* The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors

### ARTICLE III

*Section 1* The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office

*Section 2* The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, to all cases affecting ambassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have

original jurisdiction In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed, but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

*Section 3.* Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

#### ARTICLE IV

*Section 1.* Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof

*Section 2* The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States

A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due

*Section 3.* New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress

The Congress shall have power to dispose of and make all needful rules

and regulations respecting the territory or other property belonging to the United States, and *nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State*

*Section 4.* The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

#### ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article, and that no State, without its consent, shall be deprived of its equal suffrage in the Senate

#### ARTICLE VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution, but no religious test

shall ever be required as a qualification to any office or public trust under the United States

## ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the States so ratifying the same

*Done in convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the twelfth In witness whereof we have hereunto subscribed our names*<sup>1</sup>

## AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## AMENDMENT II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## AMENDMENT III

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

## AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be vio-

<sup>1</sup> The signatures are here omitted See pp 143-44



lated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

#### AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation

#### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense

#### AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law

#### AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted

#### AMENDMENT IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people

## AMENDMENT XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state

## AMENDMENT XII

The Electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves, they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed, and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote, a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two *highest numbers on the list the Senate shall choose the Vice President*, a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

#### AMENDMENT XIII

*Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

*Section 2.* Congress shall have power to enforce this article by appropriate legislation.

#### AMENDMENT XIV

*Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

*Section 2.* Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

*Section 3* No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

*Section 4.* The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

*Section 5.* The Congress shall have power to enforce, by appropriate legislation, the provisions of this article

#### AMENDMENT XV

*Section 1* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude

*Section 2* The Congress shall have power to enforce this article by appropriate legislation

#### AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

#### AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years, and each Senator shall have one vote. The electors in each State shall have the

qualifications requisite for electors of the most numerous branch of the State Legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies *Provided*, That the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution

#### AMENDMENT XVIII

*Section 1.* After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

*Section 2* The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress

#### AMENDMENT XIX

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex

Congress shall have power to enforce this article by appropriate legislation

#### AMENDMENT XX

*Section 1* The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified, and the terms of their successors shall then begin.

*Section 2* The Congress shall assemble at least once in every year,

and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day

*Section 3.* If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified, and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

*Section 4.* The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President, whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

*Section 5.* Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

*Section 6.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

#### AMENDMENT XXI

*Section 1.* The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

*Section 2.* The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.



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